TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 359.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM A. CLARK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

VOL. XII OF TESTIMONY (PAGES 5809 TO 6208, INCLUSIVE).

FILED JULY 26, 1905.

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No. 1070

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. XII

Pages 5809 to 6208, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

(Testimony of H. J. Faust.)

Q. They did what?

A. They took up their claims voluntarily without my say so.

Q. There were quite a large number of claims taken up, were there not, in your neighborhood that summer?

A. Yes, sir, I believe so.

Q. How many would you say, Mr. Faust?

A. I don't know; there were several of them that conveyed to Mr. Cobban and several others that conveyed to the Big Blackfoot Milling Company. I never put down any number that I know of.

Q. Would you say that there were twenty that you know of that took up entries under the Stone and Timber Act and afterwards conveyed to Mr. Cobban?

A. I could not say; there might have been.

Q. Now, what official position did you hold during this summer; were you notary public?

A. Yes, sir.

Q. And your partner was a United States Commissioner? A. Yes, sir.

Q. In your capacity as notary public you were in the habit of drawing deeds? A. Yes, sir.

Q. And taking acknowledgments?

A. Yes, sir.

Q. Are you a notary public yet? A. Yes, sir.

Q. And continue right along to do that business?

A. Yes, sir.

Q. Then whatever business there was done in your store in regard to this matter, so far as conveyancing

(Testimony of H. J. Faust.)

was concerned, was done by yourself; Mr. Jakways had nothing to do with it, had he?

A. He might have acknowledged some of the deeds, and there is another notary there.

Q. In your store?

A. No, not right in town, but about five miles, I think, out of town.

Q. Is Mr. Jakways a notary public, too?

A. No, sir.

Q. In addition to his being United States Commissioner? A. No, sir.

Q. You do the conveyancing for the ranchers in that neighborhood, do you not, most of it?

A. Most of it, I think I do, yes, sir.

Q. Are you able to state at the beginning of the year 1899, Mr. Faust, what your stock and inventory there was; does this ledger show that fact?

A. I think it will.

Q. Will you be kind enough to point that out, if you please?

A. No, sir, I see that the books were not closed that year, and the consequence is that the ledger does not show up the inventory at that time.

Q. Well, at what time does it?

A. It shows up an inventory at the 1st of January, 1901.

Q. It showed nothing before that, 1900?

A. No, sir, the books was not closed in 1899 or 1900.

Q. Not closed during 1898, 1899 or 1900?

(Testimony of H. J. Faust.)

A. No, sir.

Q. And it was not until January 1st, 1901?

A. Yes, sir.

Q. What do the books show then?

A. As to what?

Q. As to the amount of your stock?

A. Stock of merchandise, do you mean?

Q. Yes.

A. It showed an inventory of $10,817.61.

Q. Was that simply the amount of the merchandise account? A. Yes, sir.

Q. How much does the ledger show the indebtedness on that?

A. Well, I could not say that it shows an indebtedness, except as to wholesale firms, except such accounts as we might have owed to wholesale firms, and for that item I would have to refer to the invoice book, which I have not here.

Q. Have you no personal knowledge as to the amount that was owing the wholesale firms on this merchandise account at that time?

A. No, sir, I could not tell from memory.

Q. And had no knowledge on the subject?

A. Not from memory, no, sir.

Q. So, outside of this book, which shows a merchandise assets of say $10,000, you do not know whether you were owing at that time $5,000 at that time or not on that account? A. I don't think that we did.

(Testimony of H. J. Faust.)

Q. While you say so, are you prepared to swear that you did not?

A. Well, I could not very well say without going to our statement and all the records in the office.

Q. Then, does your ledger show all the assets of the firm at that time? A. Undoubtedly.

Q. You have stated one item of it, and that is the merchandise item. Now, how about the ranch item?

A. That is there also in the ledger.

Q. How much is that, please?

A. That shows at that same time an inventory value of $12,329.70.

Q. What was the indebtedness on that item?

A. Well, it was included with the whole business, so there was no single indebtedness to show up any more than just the firm indebtedness.

Q. Is the firm indebtedness on that item shown?

A. No, sir.

Q. Is the total of the firm assets shown?

A. Yes, sir.

Q. How much is that?

A. You mean the net worth of the firm, is that the idea?

Q. No, I am not asking you for the net; I can get that easy enough.

A. That would be the only way I can get at it, that I can see.

Q. If you give me the amount of your assets and the

(Testimony of H. J. Faust.)

amount of your liabilities, I can get the net value easy enough.

A. Well, the net value would be $21,730.78.

Q. About $12,000 of that would be real estate?

A. Not necessarily.

Q. Well, if not necessarily, how much was there?

A. Well, that $12,000 that I presume you refer to was the ranch property, and that included cattle and horses and such as that, and farm machinery.

Q. Very well. You indicate in your $12,000 item what is known as the ranch property, all of the personal property which you used on the ranch and the stock and machinery and everything of that kind?

A. Yes, sir, also the value of the land.

Q. That would make up the $12,000

A. Yes, sir.

Q. Now, then, you are unable to say how much you owed on that $12,000?

A. Why, yes, for the reasons already explained.

Q. And the other item is $10,000 merchandise and you are unable to swear how much you owed on that?

A. Yes, sir, for the same reasons already stated.

Q. So that the whole together, the $10,000 and $12,000 would be $22,000? A. Yes, sir.

Q. Now, then, you would have to take the liabilities from that in order to give your net value, wouldn't you?

A. Yes.

Q. Very well. Then, why do you say that the value

(Testimony of H. J. Faust.)

was net, when the aggregate of the whole of the assets amount to only $22,000?

A. I gave you the figures of our net worth at that time.

Q. Do you mean net worth without counting your indebtedness? A. Yes, sir.

Q. How do you use the words "net worth" as synonymous with gross amount of your assets without counting your liabilities?

A. I did not use it that way as I understand.

Q. How do you understand it?

A. Why, I gave you net worth; that meant what the firm was worth above any liabilities.

Q. Not including your liabilities?

A. Not including any liabilities.

Q. Now, then, what do you say the firm would be worth if it had $22,000 of assets and owed $20,000; would you say then its net worth was $22,000?

A. No, sir, I would not.

Q. The net worth would be $2000, wouldn't it?

A. Yes, sir.

Q. Now, when you say that you had a net worth of $22,000, and you say that you do not make any account of your liabilities, just what do you mean?

A. Well, that was what the firm was worth over and above all indebtedness, if you wish.

Q. But you are unable to state what your liabilities were?

(Testimony of H. J. Faust.)

A. Yes; I cannot give exact figures at the present time.

Q. Will you swear that you had more than $22,000 worth of property altogether, without taking into account your liabilities at all?

A. I will swear to the fact that we had $21,730.78.

Q. Made up of merchandise and ranch accounts?

A. Not necessarily.

Q. How much was your merchandise worth over and above what you owed on it?

A. I don't know as we owed anything on the merchandise to decrease its value. The inventory is supposed to be the value of the merchandise when it is taken.

Q. How much was your ranch property worth over and above what you owed on it?

A. The same answer to that.

A. And you are unwilling or unable to tell me any form of indebtedness that you had on it there?

A. Well, I am unable to give you the exact figures for the reasons already stated.

Q. Have you no knowledge as to whether there were any mortgages existing on this ranch real estate?

A. No mortgages existed at the time that that inventory was taken.

Q. Is there now? A. No, sir.

Q. The real estate was free and clear then?

A. Yes, all that we owned

(Testimony of H. J. Faust.)

Q. The larger portion of it, the title was not in you?

A. Yes, because it was railroad land and we were making yearly payments on it.

Q. And you say that the account of your liabilities would be in what book?

A. Well, it would show up on our invoice book, as to what we owed wholesale firms.

Q. Now, these books that you say that your partner writes are lost, are they books that had been completed? A. Yes, sir.

Q. And filled up?

A. Well, to that extent that we were not using them any more.

Q. Were they filled up proportionately more than this ledger that you have before you?

A. I do not know that the journal was; the cash book, I think, was full.

Q. Why did you discard the use of that journal?

A. Because we wanted to open up a new set of books, and consequently took a new ledger and a new journal and a new cash book.

Q. When did you do that?

A. January 1st, 1901.

Q. Can you tell me particularly now just the reason why at that time you wanted to open up a new set of books?

A. For the reason that any firm, I guess, opens up a new set of books every now and then. I do not know

(Testimony of H. J. Faust.)

as there was any particular reason; we did not ask for any privilege in the matter from anybody.

Q. Well, in your relations with Mr. Cbban, was there any money at all used in carrying out the arrangement that you had with him?

A. What arrangement is that?

Q. Well, any arrangement that you did make with him.

A. What money we loaned is all to these parties, if you have reference to that part of it.

Q. And that money was used? A. Yes, sir.

Q. And where did you get the money from?

A. Well, most of it was money that we had to our credit at the bank.

Q. What bank?

A. The Western Montana National Bank at Missoula, Montana.

Q. Do you remember how much of that money you used for the purpose of enabling these men to make their entries?

A. No, I could not say exactly right now; I presume I could figure it up from these books here.

Q. Didn't you borrow any money from Mr. Cobban for that purpose?

A. We borrowed some money from Mr. Cobban, but for no understood purpose.

Q. When did you first borrow money from him—you will find his account on page 412 of the ledger.

(Testimony of H. J. Faust.)

A. Between August 8th and 10th, 1899.

Q. Just read what appears in the ledger.

A. We had separate items between August 8th and 10th to the amount of $1,328.70.

Q. I wish you would give me the dates and the amounts of money that you borrowed from Mr. Cobban, commencing with the first date.

A. That was all between August 8th and 10th.

Q. How much was on August 8th?

A. I could not say; it has all been put into one item here.

Q. How much on August 10th?

A. I could not say for the same reason.

Mr. MAYNARD.—I desire to read into the record—

Q. I wish you would read into the record, please, what appears on page 412 of your ledger; just read it all, please. A. In what way?

Q. Just the way it is there.

Mr. WALSH.—We object to this as not proper cross-examination.

A. Debits first?

Q. Yes.

A. 1899, June 3d, cash item $35.

Q. What does this column refer to?

A. That is the cash book folio.

Q. Just read the cash book page there.

A. Page 27.

Witness then read account as follows:

(Testimony of H. J. Faust.)

1899

June 3, cash, 27.... .... 35.00

5, cash, 27.. .... 65.00

31 191/

Aug. 8-31, sundries, 193.... ....3053.45

Sep. 5-11 sundries, 194..... ....1840.00

Dec. 4, cash, 41.... .... 70.00

1900.

Mar. 5, cash, 51.... .. .. 5.00

Dec. 12-99, sundries, 195-203.. .... 772.00

" 31, a/c. Ted Rogers, 389..... 122.00

1899.

June 12, cash, 27..... .... 145.00

July 17, cash, 29..... .... 50.00

Aug. 8-10, cash, 31..... ....1328.70

Sep. 9-22, cash, 34.... ... .2025.00

Dec. 4, cash, 44.... .... 200.00

1900.

Feb. 20, cash, 50..... .... 383.70

May 16, cash, 56.. .... 40.00

" 31, a/c C. A. J., 207.... .... 10.00

" " a/c. Ted Rogers & O. G. M., 395-257.. 247.00

Dec. 31, Mdse. a/c error in crediting, 227.....1533.05

Q. I notice in the debit just before the last one, it is December 12th, 1899.

A. I think that is a clerical error; I think that means from December 12th to December 29th; you see the next item is for December 31st that comes afterwards, and there would be no object in putting December, 1899,

(Testimony of H. J. Faust.)

there that I can see. It is on the same principle as that item would be there.

Q. So that the total amount of the transactions between yourself and R. M. Cobban from June 3d, 1899 to December 12th, or March 5th, 1900, rather for that seems to be the last item, was $5,962.45.

Mr. WALSH.—Oh, no, that takes down clear to December 31st, 1900.

Mr. MAYNARD.—I don't know whether it does or not.

Q. You don't know yourself, do you?

A. Yes, sir, it is intended for that, 1900.

Mr. WALSH.—You have got May 31st, 1900, on the other side, and there is December 31st, 1900, as plain as can be.

Mr. MAYNARD.—Very well. Whatever this record shows.

Q. Had you ever had any transactions before you opened this account with Mr. Cobban?

A. No, sir, I believe not.

Q. Have you had any since December 31st, 1900?

A. Yes, sir.

Q. When did the transactions end, if they are ended at all?

A. Well, I don't know as they are ended; we are having transactions with Mr. Cobban right along in various ways.

(Testimony of H. J. Faust.)

Q. In what books are the accounts between you and Mr. Cobban since the end here?

Mr. BICKFORD.—We object to that as not proper cross-examination and as irrelevant and immaterial.

A. Well, there is some transactions, that would be cash transactions, that would not be carried into our books at all, and if they were carried into our books, of course, they would be carried on to the ledger.

Q. Where are your transactions that you have had with Mr. Cobban since the last item here in your new ledger?

A. That would be. I can't say that they would all be, but whatever was carried on to the ledger would be on the new ledger.

Q. And have you a recollection of quite a number of cash transactions between you and Mr. Cobban that were not carried on to the new ledger?

Mr. BICKFORD.—The same objection to this.

A. I don't know how many; there certainly are some.

Q. And was that true during the running of this account, too? A. Yes, sir.

Q. Of cash items?

A. Some cash items were not carried on to the account, so as to save me unnecessary bookkeeping.

Q. So that the moneys that during this time, from June 3d, 1899, up to December 31st, 1900, all the cash transactions between you and Mr. Cobban do not appear on this ledger.

(Testimony of H. J. Faust.)

A. No, sir, I could not say that they do.

Q. Do they appear on any book?

A. No, I don't think they do, for this reason, that cash that came in and was held by us for parties was really cash that belonged to other parties, paid in to us, and that would not appear on any book, to save the unnecessary bookkeeping; those amounts were just handed over to the parties that they were intended for.

Q. How many such instances do you recall during this period that Cobban paid you in cash?

A. That is hard to say; there might have been several.

Q. How large were the aggregate of the sums?

A. I could not say now.

Q. You have no recollection?

A. Not to make it definite, no, sir.

Q. You did not enter the payment by him to you of whatever sums he paid, even in the cash-book?

A. There were some sums of money that did not belong to us, and were simply given to us as you might say to pay to other parties, that I did not enter.

Q. And no record of any kind made of it?

A. No record of any kind; no, sir.

Q. How long did you hold this money that was paid to you by Cobban to pay to other people?

A. Well, I might have held it for a day and I might have held it for several weeks, until the parties called for it.

(Testimony of H. J. Faust.)

Q. Now, then, if you held it for several weeks you would keep it separate from your own funds?

A. Yes, just merely put it in the safe and let it stay there until the parties called for it.

Q. You did not open the packages at all then?

A. Well, the package was made up by me, and of course, I had a right to open it if I wanted to.

Q. What do you mean by that?

A. I mean by that that whatever form it was in, I would be the man that would put it away.

Q. If it was in currency you would count it and put it away? A. Yes, sir.

Q. You were always careful not to put that in with your own money?

A. As long as we had no record of it, yes, sir.

Q. And can you give me no idea as to the number of such transactions that took place between you and Cobban? A. No, I could not now, definitely.

Q. Nor the amount? A. Nor the amount.

Q. Can you tell me for what purpose they were paid?

A. Why they were paid after the deed had been negotiated—or signed, and this money was going to the different parties that had land or timber, for the land or timber that was sold by them.

Q. But you say you kept some of it for several weeks after you received it?

A. I might have, yes, sir.

Q. Why would it be kept by you in your safe for several weeks before delivery over to the parties?

(Testimony of H. J. Faust.)

A. For the simple reason, I guess, that the parties did not call for it; they don't come to town every day.

Q. Well, now, let's see what amount you did see fit to put down in some book. Do you know what this item of June 3d is?

Mr. WALSH.—I move to strike out the remark of counsel.

Q. This $35, Mr. Faust?

A. It is a cash item.

Q. Do you remember anything about it?

A. I could not say positively for what purpose it was paid out; presumably on an order given by Mr. Cobban.

Q. But if it was on an order, don't you keep those orders?

A. For a certain length of time we do.

Q. Now, this page of this cash-book here shows just the transactions, doesn't it?

A. Exactly, just as it shows there.

Q. And on that book you would show the circumstances and the facts of the case?

A I don't think there would, no, sir.

Q. But what would appear in the cash-book?

A. The same practically as the entry there, cash item on that day.

Q. What book would show what amount the $35 was paid out by you for Mr. Cobban?

A. I don't know as any would show for what purpose it was paid out.

Q Whether it was on an order or whether it was for

(Testimony of H. J. Faust.)

merchandise or whether it was for money loaned or for any of the many ways that this item might come up, you have no data at any time in your system of books by which you could know what it was for?

A. I don't think I could find it in that case, as it shows up as a cash item; if it was an order, of course the order would be filed away.

Q. I suppose the same thing would be true of this next item, $65? A. Yes, sir.

Q. Now, here is one on August 8th to 31st, ranging over the time from the 8th of August to the 31st inclusive of 1899, and the item is sundries, and it is written in your journal on pages 191 to 193. of $3,053.45. Now, what was that money paid out by you for?

A. As near as I recollect, that item, or those items there was for money paid on claims to parties that had timber to sell.

Q. Have you any book in your possession now which would clearly show me what that money was paid for and to whom?

A. No, sir, not unless the journal can be found.

Q. Would the journal show it?

A. Yes, sir.

Q. Why would the journal show that amount rather than those two former amounts?

A. Well, because the journal shows up items of that kind, that is the reason; it is journalized.

Q. Some money that you paid out for Mr. Cobban you don't journalize, and some you do?

(Testimony of H. J. Faust.)

A. Well, that was not paid out for Mr. Cobban as I understand it.

Q. Why did you charge it to him?

A. Well, we bought these claims and charged them up to Mr. Cobban, if you wish it that way, of course.

Q. If I wish it that way. I wish the truth, that is all.

A. Well, that is the truth; several claims amounting to that amount were put under sundry items.

Q. And is the same true of the next charge of September 5th, sundries, page 194, $1,840?

A. Yes, sir.

Q. And the same is true of the item December 12th, 1899, $772? A. Yes, sir.

Q. Now, then, these other cash items represent the money that was advanced by you to different persons that took up entries under the Stone and Timber Act, did it not?

A. No, sir, I would not say that they did.

Q. Would you say that they did not?

A. I would say that they did not.

Q. Why do you say that?

A. Well, because I know there was no advance made on account of Mr. Cobban in a case of that kind.

Q. That is, that no persons that made entries under the Stone and Timber Act borrowed money from you and which you charged to Mr. Cobban to enable them to go to Helena for instance and file?

A. Yes, sir; there was no money borrowed from us in a case of that kind and charged to Mr. Cobban.

(Testimony of H. J. Faust.)

Q. Wasn't there money borrowed from you for that purpose?

A. Yes, I presume they used it for that purpose.

Q. How many can you now recall?

A. Well, there was Mr. Doney.

Q. How much did he borrow?

A. The amount is there in the ledger, I think.

Q. Just look over that, those items there, please, and see if you can find the amount that you loaned Mr. Doney.

A. Well, you will notice there have been loans here at different times.

Q. Can you pick out the one that you loaned him to go to Helena with?

A. To make final proof?

Q. Yes.

A. This amount here included that, Mr. and Mrs. Doney, $632.

Q. On August 19th? A. 14th to 19th.

Q. What does that 14th to 19th mean?

A. It showed that they borrowed money at two different dates, or at propably more than at two different dates.

Q. That item was between the 14th and 19th of August, 1899? A. Yes, sir.

Q. This item of sundries charged $3,053.45 between the same dates, wasn't it, August 8th to 31st, 1889, charged to Cobban. Now, do you swear that this item here of $632, charged to Doney between the 14th and

(Testimony of H. J. Faust.)

19th, which you paid out to him, was not embraced in that item there? A. It was not.

Q. How are you able to swear to that?

A. Well, there were other deals pending at that time.

Q. Can you name them? A. Yes, sir.

Q. Let us go on and name them now.

A. There was a deal on with Cora Y. Faust and L. S. Jakways.

Q. That is your wife and your partner's brother?

A. Yes, sir.

Q. Go no that would take $800? A. How so?

Q. To buy the land.

A. They got more than $800.

Q. I am talking about what they paid out to buy the land.

A. That has nothing to do with their buying the land.

Q. Go on and name the items of which this $3,053.42 is composed.

A. Well, I don't know, but I feel satisfied that those two items were included in that, and I think also a part of the Charlie Johnson claim.

Q. Can you name anything else?

A. Not at the present time, I could not.

Q. And your books that contained the facts are destroyed?

A. I don't know that they are destroyed; it seems that they could not find them, as per the letter that I showed you.

(Testimony of H. J. Faust.)

Q. When did you see them last?

A. Well, I haven't see them since I filed them away, and I presume that was about the beginning of the year 1901.

Q. Now, you did not throw away this new book here in which there was little or no entries and get a new one and get an entirely new set of books for the express purpose of covering up the evidence in this case, did you?

Mr. BICKFORD.—We object to that style of cross-examination, throwing an imputation on the witness.

Mr. MAYNARD.—That is exactly what we claim.

Mr. BICKFORD.—We object to that style of cross-examination of the witness; it is not proper cross-examination, and we insist that it is not fair for counsel to impute a motive to a witness who appears to be so fair and frank and open and free in answering questions as this witness has appeared, and who has so frankly explained his efforts to obtain the books that counsel has referred to.

Mr. MAYNARD.—I ask the question simply to have the witness swear to the denial of it but I am stating to the Examiner and to counsel that the theory of the Government is, from the disclosures which have already been made by this witness, that such books as contained the original transaction were willfully destroyed or lost, and that this ledger upon which there was little or no entry was thrown away and a new one put in use to

(Testimony of H. J. Faust.)

cover up as far as possible the transactions between themselves and Mr. Cobban, and that there is no excuse whatever given by the witness for his throwing away a book in which there are little or no entries and starting a new ledger account.

Mr. WALSH.—The question contained a gratuitous insult to the witness on the stand by counsel, which he indulges in simply because there is no correcting or supervisory power here, and a question, which, if he were in court, would not be tolerated for a moment, and for which he should be justly rebuked by any Judge sitting in the trial of this cause. If counsel desires to draw any such deductions as that from the evidence, he can make his argument to that effect when we come to sum up this evidence, but he has no business to openly and gratuitously insult the witness on the stand whom he is examining, by addressing such a question as that.

Mr. MAYNARD.—I have a right to show that he is willing to put himself on record as swearing to such a fact, when it appears from other facts here and from his testimony that he has not done anything of the kind. I am surprised you have not instructed the witness not to answer.

Mr. WALSH.—We have no disposition to say anything of the kind to this witness, and he shall be permitted to answer. We desire, however, to have these objections go in the record, and we desire now to say to

(Testimony of H. J. Faust.)

counsel that if he proceeds in this style of examination, we will instruct the witness not to answer.

Mr. MAYNARD.—I expected you would; you are always protecting your witnesses.

A. Answering the first part of your question, I wish to say that the books have not been thrown away as Mr. Maynard now holds it in his lap. The further fact that had we wished to cover up any such evidence, it would seem that we would not have used the books for an entire year after these timber transactions were made. The book there shows all the transactions of such nature as we used the books for during the years 1897, 1898, 1899 and 1900.

Mr. WALSH.—Now answer his question categorically: did or did you not throw the old books away and get some new ones to cover up the evidence in this case?

A. No, sir, we did not throw them away.

(By Mr. MAYNARD.)

Q. Did you not testify a few minutes ago that your transactions with Cobban continued right along and are continuing even up to this hour? A. Yes, sir.

Q. And that those transactions do not appear in any of the books that you have produced here in court?

A. I did not say any of them.

Q. I mean subsequent to this last item?

A. Subsequent to 1900, they do not, of course.

Q. Did you not say further that the book in which

(Testimony of H. J. Faust.)

there were any particular items by which you yourself could know what the charge was, was lost?

A. I did not say it was lost; I said it could not be found by my assistant.

Q. I don't know what you mean by that. If that is not the same thing—now, your explanation that you have given simply with reference to your wife and your partner's brother and possibly to the Johnston claim, are you able to swear with that explanation, that this Doney charge is not embraced in this item of $3,053.45?

A. Why, certainly, because I would not be apt to enter two debit items in that way, so as to conflict with the balancing of the books.

Q. That is your answer? A. Yes, sir.

Q. Now, then, when we come to these cash items June 12, $145—do you know what that means at all?

A. Nothing more than I presume Mr. Cobban paid us the cash.

Q. On July 7th?

A. For these different amounts.

Q. July 29th, $50? A. Yes, sir.

Q. August 8th, to 10th, $1,328.70?

A. Yes, sir.

Q. Have you no recollection whatever as to why he paid you that amount of money?

A. The recollection of that particular item is that we borrowed a sum of money to that amount, as near as I can now remember.

(Testimony of H. J. Faust.)

Q. Had you ever borrowed any money from Mr. Cobban before? A. No, sir.

Q. This was less than two months that either of you had had any acquaintance with him at all, was it not; neither you nor Jakways knew him in June, 1899, did you?

A. Yes, I think I knew Mr. Cobban in June.

Q. Well, you did not know him until you were introduced to him at your store?

A. No, not from personal knowledge.

Q. As a matter of fact, Mr. Jakways had been introduced to him just a day or two before that.

A. I knew of Mr. Cobban before, through his brother, Mr. W. F. Cobban.

Q. Sure, and you know of the President of the United States, I suppose?

Mr. WALSH.—You need not answer that question.

Q. But if you had had no personal acquaintance with him and had not been introduced to him, how was it that in two months afterwards you borrowed $1,328.70 from him?

A. Why, simply because we had the privilege to borrow that amount from him if we so desired.

Q. What did you give him by way of security?

A. As near as I can remember, I think, we gave him our note at the time.

Q. Will you swear that you did?

A. I could not say positively.

Q. In one month next thereafter, on the 9th of Sep-

(Testimony of H. J. Faust.)

tember, or between the 9th and the 22d, he paid you $2,025?

A. Yes, sir.

Q. What was that for?

A. That was for options on claims.

Q. Options on claims?

A. Yes, that we were negotiating to buy.

Q. For him?

A. For him, yes, sir, particularly those of Charlie Johnson, L. S. Jakways and Cora Y. Faust.

Q. And in the same way do you account for the item of $200 on the 4th of December and on the 20th of February $383.70?

A. For settlements that were due us on options.

Q. What is this item here, December 31st, merchandise, account of an error in crediting, $1,533.05. What is that?

A. That, as near as I can explain now, would be matter or items that ran into the merchandise account which should have been run into the sundry accounts.

Q. That is, you charged it up originally to merchandise account on the theory that you had sold him goods?

A. Well, it went into the merchandise account by error, as you see there, when it really did not belong to the merchandise account, and the only way to fix it was to credit it back.

Q. Now, you received from June 12th, 1899, to December 31st, 1900, on the ledger account in cash

(Testimony of H. J. Faust.)

from Cobban $5962.45. Now, then, did you receive twice as much as that from him personally that you did not enter on any book of yours?

A. I could not say that I did.

Q. You won't say but what you did, will you?

A. Why, whatever money was received beyond that was money that was due other parties; of course, I have no recollection of that part of it now.

Q. You won't say but what it was more than $10,000, will you?

A. I could not say without adding up and figuring out.

Q. How can you add it up and figure up; are they all embraced in this ledger?

A. No, sir; there would be some items, I presume, that I couldn't account for, on account of cash as I said that we held, that we took on account of; of course, I could not remember all them things and don't pretend to.

Q. Are you prepared to say that the whole amount in all forms and shapes of the dealings that you had between yourself and Cobban—I mean that Cobban paid you in various ways, either that you entered upon your ledger account or that he handed to you in person, or that he handed to you to put in your safe to pay out to people who bought land, or that he deposited in the bank in Missoula subject to your order and check—that the whole business would not aggregate $50,000?

(Testimony of H. J. Faust.)

A. Oh, it would not aggregate that amount, I am sure.

Q. How much less? A. I could not say now.

Q. No? Well, this, from my provincial and narrow standpoint of east of the Mississippi, would seem an enormous amount of money that you received from Cobban in these various forms, and you say that that was held by you and paid out by you and received by you with no understanding between you and Cobban as to how the money was to be used?

A. With the understanding as to how the money was to be used—of course, there was, after the transactions were made, after these deeds, if you might say so, had been signed, then of course, we understood where the money was going to.

Q. That is, you had an understanding between Cobban and yourself as to how the money was to be used after the deeds were executed by the entrymen to himself?

A. Whatever he bought through us, yes, sir.

Q. And what was that arrangement?

A. Why, there was no particular arrangement, any more than we were instructed in case we found timber lands, to buy them for the amount that he wished to pay if we could.

Q. Well, in the handling of this large sum of money and the doing of this business, it took up a lot of your time, did it not? A. Not necessarily.

(Testimony of H. J. Faust.)

Q. Well, I am asking you as to whether it did or not as a matter of fact take up a good deal of your time?

A. No, it did not. The paying out of a sum of money or the receiving of a sum of money should not take up a very great amount of time.

Q. Well, in the drafting of the deeds and in all of the work that was required to be done, which culminated in the execution and delivery of the deeds, the negotiations which took place, didn't they take time?

A. If the deed was drafted by me, of course, I had a charge for that and that went to the entryman; if I simply acknowledged it, I had a charge for that, and that is paid by the entryman. The negotiations were of such a nature that it did not require but a very little time.

Q. When did you first hear about any efforts being made by people up there to make entries under the Stone and Timber Act?

A. Well, they have made entries in there for, I presume, ever since I came in there as near as I can remember, off and on.

Q. Well, I am aware of that, I know that your partner took up one in 1891 or 1892, and you probably did; you exhausted your rights under all the forms of the Federal Law, didn't you? A. No, sir.

Q. Have you still one left?

A. I have two left, I think.

Q. I am aware of that fact; I am talking about the year 1899. Who was the first one of the parties that

(Testimony of H. J. Faust.)

conveyed to Cobban that you had anything to do with, that made entries under the Stone and Timber Act?

A. Why, I think the first one was L. S. Jakways and Cora Y. Faust; I don't remember exactly how the rotation came up, but I know they were the first negotiations for the sale of their timber to Mr. Cobban.

Q. Well, at the time that you became introduced, you and your partner to Mr. Cobban, when Mr. Griswold was present, your wife had already filed on her piece, had she? A. Yes, sir.

Q. And Jakways' brother had filed on his?

A. Yes, sir.

Q. And they were exceptionally good pieces, were they not?

A. We considered them good land, yes, sir, good timber land.

Q. Of course, you were anxious to get all the money you could in your wife's case from Mr. Cobban. Now, did you secure the money from Mr. Cobban to pay for your wife's claim? A. No, sir.

Q. When did she make her final proof?

A. She made her final proof, I think, in the latter part of June.

Q. That was after you had met Mr. Cobban?

A. Shortly afterwards, yes, sir.

Q. He knew of the fact that your wife had made a filing, did he not, and called your attention to it at the first conversation that you had with him?

(Testimony of H. J. Faust.)

A. No, there was nothing said to me about it; there might have been to Mr. C. A. Jakways.

Q. When was the first conversation that you had with him about selling your wife's claim to him?

A. I don't remember ever having any conversation with him in regard to that, because those negotiations were left with my partner, Mr. C. A. Jakways.

Q. As far as your wife was concerned?

A. Yes, sir.

Q. How was that?

A. Well, I presume for the simple reason that he was negotiating for his brother's claim and I think Mr. Johnson's, so he was also given the negotiation for her claim if I remember right.

Q. Didn't you concern yourself at all about getting as good a price as you could for your wife's land?

A. Why, we might have talked it over, her and I, as to what price she would be willing to accept.

Q. After these claims that had been taken up before you got acquainted with Mr. Cobban, which was the next one in order?

A. I could not now remember; there were several filings made right in close order, and I did not keep track as to who filed first.

Q. How do you know of the fact that such filings were made?

A. The people themselves informed me that they were intending to file, and I took it for granted that they did.

(Testimony of H. J. Faust.)

Q. Can you recall their names?

A. Well, there was L. A. Wells, and Edward D. Doney and Martha M. J. Doney, Albert Muchmore, and Guy W. Muchmore, Oliver E. Muchmore, Elizabeth A. Muchmore, D. M. Hunsecker, Howard B. Goodfellow, Mary J. McLean; there might have been others that I do not remember; I know that there were several filings there.

Q. These filings were made after your negotiations with Mr. Cobban?

A. I don't understand what you mean?

Q. Well, after you had met Mr. Cobban?

A. After I had met Mr. Cobban, yes, I think they were all made after I had first met Mr. Cobban.

Q. Your partner, Mr. Jakways, he was out with Mr. Griswold in cruising around and finding locations, wasn't he?

A. He was out with Mr. Griswold, I believe, several times, but I understood for the purpose of finding old sections, that is, odd forties on sections, for the use of lieu land scrip or whatever you call it.

Q. That was to be taken up in the interest of Mr. Cobban?

A. I don't know as there was anything said about that.

Q. How much time did Mr. Jakways put in around with Mr. Griswold during that spring and summer and fall?

(Testimony of H. J. Faust.)

A. I could not tell you, because his home is on our ranch 10 miles about away from Ovando, and he might have spent more or less time with Mr. Griswold that I had no knowledge of; I never asked him.

Q. Now, you had made no arrangement at all or had no understanding, expressed or implied, with Mr. Cobban, that you were to receive pay for your services and your partner's services in and about this work, had you?

A. No, sir, we were simply helping our neighbors all we could to secure these claims if they wished to take them.

Q. And that was the sole motive which led you to do what ever work you did and whatever your partner did for Mr. Cobban, was the philanthropic purpose of aiding your neighbors?

A. Speaking for myself, it was.

Q. And you received no pay of any kind from Mr. Cobban? A. None whatever.

Q. Who paid your expenses here to Helena from Ovando to make final proof in the Doney case?

A. Mr. Doney did, and Mrs. Doney.

Q. How much did they pay you?

A. I don't remember the exact figures; whatever the railroad fare and board and other expenses there amounted to.

Q. Do you mean to say that they paid you in cash the amount of the disbursement?

A. Well, it was included in the settlement; whatever amount it required, as near as I can now remember.

(Testimony of H. J. Faust.)

Q. Included in the settlement?

A. Yes, sir; at the end of the year.

Q. Why, as a matter of fact, Mr. Faust, instead of their paying you money, didn't they have to borrow money themselves to come here from you?

A. They borrowed money as I understood it for making the final proofs; still that is no reason why they should not pay me afterwards for coming over there as their witness that I can see.

Q. Did you know anything about this deal at all, any arrangement that they had with Mr. Cobban to sell to him?

A. I never understood that there was any arrangement to sell to him or to anyone else?

Q. Never did?

A. No, sir; they were free to sell to anybody they wanted to as near as I understood it.

Q. Now, as a matter of fact, Mr. Faust, did not you in these Doney claims act substantially as the representative of Mr. Cobban from the beginning to the end of that matter? A. No, sir.

Q. Did you not take the money that paid for the land from your store, and wasn't it in the money which is in this statement, which appears in your ledger, and which now appears in the record?

A. No, sir; they borrowed the money the same as the others did. I did make a statement, I believe, before dinner there, that they paid in the money in themselves

(Testimony of H. J. Faust.)

at the land office, but after thinking the matter over I believe that I handed the money over to Mr. Horsky myself at their request.

Q. They did not handle the money at all, did they?

A. I don't remember whether I first gave them a check and they afterwards handed me the check to hand to Horsky or not.

Q. Didn't you have charge of it; didn't you draw the papers by which they conveyed their land?

A. I don't remember whether I did or not; I took their acknowledgment at any rate, I think. I could not say whether I drew the papers or not.

Q. Where were they when they acknowledged it?

A. I think at our store in Ovando, Montana.

Q. That is on their return from Helena?

A. No, but it was shortly afterwards.

Q. It was within two or three days, wasn't it?

A. I could not tell you, I am sure.

Q. Do you remember any of the facts and circumstances about that?

A. No, sir, I do not now.

Q. When did you first find out that they were going to sell to Mr. Cobban?

A. Well, I could not say that exactly; if I remember right, Mr. Cobban had estimates on all of that land in there, and I think as near as I now remember that he had given us figures at which he would pay for Mr. Doney's claim in case he wished to convey after he had made final proof.

(Testimony of H. J. Faust.)

Q. When did he give you those figures?

A. Well, I don't know that; I think they were sent up by mail to us, if I remember right, about that time.

Q. Sent up by mail. Were there any other claims mentioned except the Doneys at that time?

A. I could not say if there was or not; I don't recall; there might have been.

Q. Have you got that letter?

A. No, sir, I have not.

Q. Where is it?

A. I don't know as it is to be had; it might be. We file our letters away for a certain length of time, and it might possibly have been destroyed afterwards.

Q. How much did he tell you that he was willing to give for the Doney claim?

A. Well, I could not say; whatever the transaction was in the matter; the deeds would show that.

Q. The deeds would show?

A. I think they would.

Q. You have no knowledge, have you, as to whether the consideration named in the deed was the true consideration?

A. No, I could not say; I never kept any record of any kind of that nature.

Q. How long before you came over to Helena with the Doneys was it that you received this letter from Mr. Cobban?

A. I don't know as I received it prior to my going to Helena.

(Testimony of H. J. Faust.)

Q. You don't know when you received it?

A. I could not give you the exact dates, no, sir.

Q. If, as a matter of fact, you received this letter before going to Helena, stating to you how much he would authorize you to pay the Doneys for their land, you had some idea as to the purpose for which these entries were being made, did you not?

A. I do not remember of receiving this letter, as I said, from Mr. Cobban prior to going to Helena; I said about that time; presumably, it was either at our office about the time I got back from there, or shortly afterwards; I paid no attention to that part of it, as to dates.

Q. Have you no recollection as to the amount that he authorized you to pay over and above the cost?

A. Nothing more than what the letter stated; whatever that amount was, of course, was paid.

Q. And you have not got the letter and you have forgotten the amount?

A. I have not got the letter here, and I don't remember the amount.

Q. Well, in what you did in the matter, wasn't it in pursuance to the instructions which you received in this letter, whenever it was received?

A. I presume as to the amount of it. If Mr. Doney was willing to accept that amount, Mr. Cobban would be willing to purchase.

Q. Now, then, as a matter of fact—turn to Mr. Doney's account, if you please. How much money did you pay to the land office on his account?

(Testimony of H. J. Faust.)

A. I think about $600.

Q. What is this item of August 14th-19th, Journal page 32 $632?

A. It showed the amount of money borrowed at that time, between those two dates. Still, some of that might have been used, you understand, for traveling expenses?

Q. Have you no knowledge or recollection of some of that money being used for traveling expenses?

A. I never inquired as to what they used it for.

Q. Do you remember loaning them some money for that purpose?

A. I don't know as they told me what they were intending to use it for. If a man comes and asks for a small or a larger loan of money I hardly ever pry into his business enough to ask him what he is going to use it for.

Q. Have you any recollection what this item of September 6-30 was?

A. No, sir; it is cash, whatever it was intended for, and those cash items as you see there, money that he borrowed from us.

Q. One hundred and twenty-five dollars and twenty-five cents?

A. Yes, sir; it runs between September 6th and September 30th.

Q. What is this item of November 7th?

A. Well, it is on the same principle as you see, amount in cash that he has had between those two dates, $159.31.

(Testimony of H. J. Faust.)

Q. What is this cash credit here on September, 22d, 1899? A. That is a cash credit of $900.

Q. What was that for?

A. I presume that was the payment on the land, or part payment.

Q. That is on his deeding the land?

A. On his deeding the timber.

Q. You credited him with $900?

A. It seems so, yes, sir; whatever the amount he wished to be credited with, of course was credited.

Q. And the amount that was charged to him was $632?

A. There was some cash paid, if I recollect right at that time, as I said before, of which I kept no record: he was credited with whatever he desired to be credited with.

Mr. MAYNARD.—I desire to read into the record as much of this page 50 of the ledger as contains Ed Doney's account, it commences with May 26th, 1899.

1899.

May 26, cash, 25..... 50.00
Aug. 7, cash, 31..... 21.25
Aug. 14-19, cash, 32..... .....632.00
Sep. 6-30, cash, 34-36..... .....125.25
Nov. 7-25, cash, 40-43..... .....159.31

195/

Dec. 31, Sundries, 203..... 23.00

(Testimony of H. J. Faust.)

1900.

Jan. 18, cash, 47..... 10.00
Feb. 20, cash, 50..... .30
June 30, cash, 58-59..... 5.25
July 4, cash, 60..... 12.00
Oct. 1-15, cash, 67..... 2.30
Nov. 26, cash, 70..... 12.34

204/

Dec. 31, sundries, 215..... 5.00
Mdse, 217..... 620.70

1898.

Mar. 9, cash, 65..... 10.00
July 2, cash, 1..... 20.00
July 20, cash, 2..... 1.00
Dec. 7, cash, 13..... 35.00
Dec. 20, cash, 14..... 18.76

1899.

Sep. 22, cash, 35..... 900.00
Dec. 31, sundries, 195-203..... 35.00

1900.

Apl. 7, cash, 54..... .65
June 23, cash, 59..... 12.00
Aug. 12, cash, 65..... 5.00
Nov. 20, cash, 70..... 12.34
Dec. 20, cash, 72..... 52.00

204/

Dec. 31, sundries, 215..... 44.75
Mdse, 217..... 92.62

(Testimony of H. J. Faust.)

Q. Now, what does this merchandise, page 217, blank date, and merchandise debit page 217, $92.62; what does that mean?

A. Merchandise bought during that time and merchandise sold him during that time.

Q. Why, this is merchandise here. What is this $620.70; what does that cover?

A. It covers between the 1st of January, 1898, and the 31st of December, 1900.

Q. That is the total merchandise account, is it, $620.70? A. Yes, sir.

Q. And the amount that had been paid—

A. And the merchandise that we had bought from him in the meantime, covering the same period, $92.62.

Q. Now, what is this sundries; what do you mean by that?

A. Well, sundry items, such as come up in business, classified under one head to the amount of $5.

Q. Explain how in your dealings with Mr. Doney there could be that item; what would there be?

A. Well, there would be most things that could come under sundry items.

Q. You have got cash that you loaned him and merchandise that you sold him, now what would this be?

A. It might have been to pay orders, whereby he would be debited and other parties credited; that would come under sundries.

Q. And here is a sundries a credit of $44.75.

A. It might be the same way, too, whereby he was

(Testimony of H. J. Faust.)

credited and other persons debited brought that about. We very often make exchange of debits and credits that way.

Q. Can you tell now how much Mr. Doney made out of his land deal from that statement there?

A. No, sir; I could not; from the fact that there was some money paid him besides what was credited on the books there, some cash paid him of which we made no record.

Q. Why?

A. Well, for the reason that I explained this forenoon.

Q. What was that?

A. I did not consider that the money belonged to us or to his credit until such time and in such sum as he wished to have placed to his credit.

Q. How much do the books show outside of whatever money he may have received that he made on this deal there?

A. How much total amount he received from his timber?

Q. Yes. A. Well, I can't tell you.

Q. Over and above what it cost him?

A. Well, that don't show anything further than that, as I say; there was cash given him at the time that this credit was made of which no entry was made.

Q. Who gave it to him?

A. Undoubtedly I did.

Q. You don't know how much it was?

(Testimony of H. J. Faust.)

A. No; I kept no record of it.

Q. You have no recollection as to the amount?

A. I couldn't say now.

Q. Is the same true of his wife? A. Yes, sir.

Q. And so the amount of money that you gave them of which you have no recollection whatever, and the amount appearing in that which has been read into the record, shows the transaction, does it not?

A. Yes, sir.

Q. If that is true, tell me how much Mr. Doney received as far as the books show.

A. Well, the book shows $900 at one credit.

Q. And how much is he charged with?

A. He is charged with at two different times there, or you might say the charges there run during that same year from May 26th, 1899, to December 31st, 1899, various sums as you have already on the record there.

Q. Now, does not that in fact show the complete record? A. The timber deal, you mean?

Q. Yes. A. No, sir.

Q. Why should you put down some of them of those items in your account and leave out others?

A. I have told you the reason why.

Q. Well, I want you to tell me again, so that I will understand it.

A. That amount was cash on hand to pay them for the land, for the timber deals; they were simply credited with the amount they wished to have placed to their

(Testimony of H. J. Faust.)

credit, and the balance was paid them in cash, and no record taken on my part of the cash payments.

Whereupon further hearing was adjourned till Friday morning, May 2d, 1902, at 10 A. M.

Friday, May 2d, 1902, ten o'clock A. M.

Hearing resumed pursuant to adjournment.

HENRY J. FAUST, recalled for further cross-examination.

Q. Why did you go to Helena with the Doneys?

A. As stated yesterday, at their request, as a witness in making the final proofs.

Q. And that was the sole reason? A. Yes, sir.

Q. And they paid you for your expenses at the time they sold the land?

A. I dont know as they paid me at the time they sold the land; they eventually paid me back my expenses, yes, sir.

Q. Have you any minute in your ledger showing that fact?

A. No, sir; I don't know as the ledger will show that fact.

Q. Have you any check or memorandum of any kind that will show it?

A. I couldn't say that I have; possibly I kept no other track of it being a personal account.

Q. Did the Doneys have money to pay for the lands?

A. They were borrowing money from us, I presume, for that purpose.

(Testimony of H. J. Faust.)

Q. Did they borrow the money to pay for the expenses of making the entry, and the traveling expenses to Helena, too? A. I presume they did.

Q. Are you able to tell from your ledger how much they borrowed? A. Yes, sir.

Q. How much was it?

A. The same amount that I stated before, between August 14th and August 19th, $632.00.

Q. Well, that wouldn't pay for both descriptions, would it? A. I don't know.

Q. Well, do you know how much the Government price is for a hundred and sixty acres of land under the Stone and Timber Act?

A. I think about four hundred dollars.

Q. Well, the two descriptions would be eight hundred dollars, then, wouldn't?

A. I don't think Mrs. Doney's was a hundred and sixty acres.

Q. How much was hers?

A. I don't recollect exactly; I think it was eighty acres.

Q. So that this $632.00 on August 7th, between August 14th, and 19th, represents the amount that you advanced the Doneys to pay for both descriptions and expenses?

A. That is the amount they borrowed.

Q. Do you know what this item of May 26th—this cash item of May 26th is?

(Testimony of H. J. Faust.)

A. Undoubtedly another amount that they borrowed—that Mr. Doney borrowed.

Q. Do you know for what purpose?

A. No, sir, I never asked him that I know of.

Q. He filed on the land in Helena—they filed on it after the 22d of May, and don't you know of the fact that they borrowed the money for you to come over here to Helena to file on it?

A. They might have used it for that purpose; I never inquired; it was none of my business.

Q. Did you know of the fact of their stopping at the store about that time and telling you that they came there to get money to file?

A. They may have said something about that; I don't recollect.

Q. Do you recollect of their being in the store about that time?

A. They certainly must have, or they probably wouldn't have got that fifty dollars.

Q. Now, that would be fifty dollars on the 26th day of May, 1899, and the next day thereafter they filed on the land in Helena?

By Mr. WALSH.—We move to strike out the statement of counsel, because it is not a question addressed to the witness.

Q. And on August 14th or 19th, you advanced them $632.00, which you have accounted for? Now, do you know what this item of $125.25, between September 26th and September 30th?

(Testimony of H. J. Faust.)

A. Undoubtedly for the loans which it would indicate.

Q. And this item of November 7th to the 25th, $159.-31, do you know what that stands for?

A. Undoubtedly for the loans.

Q. Well, now, you mean the 7th to the 25th. What does that mean?

A. It means loans at different times between two dates. Those are the probable dates, between those two days.

Q. Or may it refer to one loan between those two dates?

A. No, sir. If it did, it would state it exactly.

Q. November 25th, represents loans made on those two dates?

A. It might have been. We made loans repeatedly. It means two loans.

Q. Are you unable to say, from your system of bookkeeping what this November the 7th to the 25th, means?

A. Yes, sir, I can do that.

Q. Well, what is it, then?

A. I cannot tell without the cash-book, and my cash-book isn't here.

Q. I am inquiring whether or not from your system of bookkeeping, this 7th of November to the 25th, it means that cash was loaned on those two dates, on November 7th, and the 25th, or does it cover dates intermediate between those two dates?

(Testimony of H. J. Faust.)

By Mr. WALSH.—He has already answered that question.

A. I have answered that.

Q. What was your answer?

A. My answer was that it may mean those two dates, or it may mean intermediate dates.

Q. And if it was intermediate dates, the charge would be the same way as this? A. Yes, sir.

Q. And you would not specify the dates?

A. Not in putting it into the ledger; in order to economize time and space in posting.

Q. Do you remember of your receiving an order thereon yourself, drawn by Doney, in favor of Dixon for a hundred and sixty dollars?

A. I might have; I do not now recollect.

Q. Well, would that charge appear in the ledger?

A. I think that charge would appear under the dates of November 7th to the 25th.

Q. And is embraced in the charge of $159.31?

A. If that is the order of November, I presume it is embraced in those dates.

Q. And is there any credit—is there any credit in this ledger on account of this loan, direct to Mr. and Mrs. Doney, except this credit the 22d of September, 1899, of $900.00?

A. I couldn't say whether that is the total credit on account of the loan, or not; they certainly were credited at that time, as you see yourself, with $900.00.

(Testimony of H. J. Faust.)

Q. You have no personal recollection of any other credit, have you?

By Mr. WALSH.—He has answered that question already.

A. Why, there are numerous credits there.

Q. Well, do you know on what account they are?

A. I could not now say, no, sir.

Q. The $900.00 credit is for the loan, is it not—for both pieces of land?

A. I presume it is a credit that Mr. Doney asked us to place to his credit for that amount.

Q. That is—I show witness Complainant's Exhibit No. 21, which is the certified copy of the deed executed by Edward B. Doney and Martha M. J. Doney, of Ovando, parties of the first part, to R. M. Cobban, of Missoula, Montana. Do you recollect of drawing that deed?

A. No, sir, I don't recollect whether I drew the body of the deed or not; I might have, and still I couldn't now say without seeing the original.

Q. You don't know whether it was prepared in Missoula and sent up to you for acknowledgment or not?

A. I couldn't now recollect.

Q. Do you remember of the parties, Mr. and Mrs. Doney, appearing before you and acknowledging it?

A. They certainly must have; I certainly acknowledged it according to that copy.

Q. Well, have you no recollection whatever of the

(Testimony of H. J. Faust.)

fact, other than that you conclude it must have been so from the fact that you see your name to this deed?

A. That is all; I don't keep any memorandum of things like that.

Q. You don't know whether they were in your store or not, then, and acknowledged the deed?

A. I wouldn't be positive whether they were in the store, or I might have been out to their home. I would say that this shows that it was acknowledged by me, but I rather think that they were in the store.

Q. But if it was not for this deed which I show you, and in which your name appears as the notary public, your mind would be a perfect blank on the subject, would it?

A. Why, I certainly couldn't recollect without seeing the original. I have transactions like that quite frequently, and I could not state now; I don't presume that I would sign my name to anything of that kind without seeing it.

Q. But you don't remember any of the facts and circumstances connected with the making of the deed?

A. No, sir, I do not.

Q. Do you know how the consideration here happened to be fifteen hundred dollars?

A. No, sir, I do not.

Q. Do you know what the consideration was?

A. I don't now remember the exact consideration.

Q. Do you remember any facts connected with the transaction?

(Testimony of H. J. Faust.)

A. Only these, that deeds were executed as near as I now remember, by Mr. and Mrs. Doney for their timber and stone claims, and also on Mr. Doney's homestead, entry, to Mr. Cobban.

Q. Well, do you remember how it happens that they conveyed to Mr. Cobban?

By Mr. WALSH.—He has already answered that.

A. Because Cobban offered him a price, I suppose, that they were willing to accept.

Q. And you don't remember what that price was?

A. No, sir, I don't now recall.

Q. Did you have any of Mr. Cobban's money at the time to pay for the land?

A. I don't remember whether we paid them in full at the time that they executed the deeds or not, or whether we just made them a part payment.

Q. Well, you have no recollection of making any payment, have you?

A. Yes, sir, I paid them several hundred dollars, as near as I can remember.

Q. In cash?

A. Yes, sir, shortly afterwards, besides this credit that is on the books to their account, paid to Mr. Doney's account.

Q. How many hundreds of dollars, would you say?

A. I think something near fourteen hundred or fifteen hundred dollars.

Q. That you paid the Doneys—that you paid the

(Testimony of H. J. Faust.)

Doneys for their land, in addition to what appears on this ledger? A. Yes, sir.

Q. Well, when did you pay them this fourteen or fifteen hundred dollars?

A. I couldn't recollect any dates, because I kept no track of that money, and because it was not mine, as I considered it, and I simply paid it over to them without making any account of it.

Q. Well, how long a time after the delivery of the deed or the execution of the deed, before you say this was done? A. How long a time after?

Q. Yes, sir.

A. I couldn't tell you how long, exactly.

Q. Well, if you cannot tell exactly, give us your best judgment about it?

A. Well, presumably during the month of October.

Q. That you paid Doney in addition to what appears on this ledger, twelve hundred or fourteen hundred dollars in cash? A. I don't say that.

Q. Well, what do you say?

A. I think between fourteen and fifteen hundred dollars.

Q. Well, fourteen or fifteen hundred dollars. So that if it was fourteen hundred dollars in cash that you paid Doney, and nine hundred dollars of credit that appears on your book, of September 22d, that would be twenty-three hundred dollars that you paid for the land? A. According to that.

(Testimony of H. J. Faust.)

By Mr. BICKFORD.—Now, at this point we desire to interpose an objection to all of the cross-examination of this witness concerning this particular matter, and we move to strike out all of the testimony given by the witness concerning it, concerning the deed which has been shown to him, for the reason that it is irrelevant and immaterial, and does not prove or tend to prove any issue whatever in the case, and because none of the land that is mentioned in the deed, or that was ever deeded to the defendant, is alleged in the bill of complaint herein filed, to have been so deeded.

Q. Have you any paper of any kind which shows the payment to Doney of this fourteen or fifteen hundred dollars?

A. I have answered you that I have not.

Q. And it does not appear on any book of the firm, or on any individual book of your own?

A. Not that I know of.

Q. Have you any recollection—present recollection, of any time or place, when you paid this money or any part of it?

A. Nothing further than I have already stated.

Q. Well, did you give it to him in currency?

A. I could not now tell you.

Q. Was anybody present at the time?

A. I could not now tell you.

Q. And you just simply swear that you paid him fourteen or fifteen hundred dollars, but have no memory

(Testimony of H. J. Faust.)

about the fact other than their statement, nor of any place where, or any circumstances connected with such payment, and you have no data of any kind which shows the payment?

By Mr. WALSH.—This is merely argumentative, and we therefore object to it for that reason.

Q. Is that so, Mr. Faust?

A. I remember of having paid him several hundred dollars in cash.

Q. Well, where were you?

A. Presumably at our store in Ovando, Montana.

Q. And did you take a receipt from him?

A. Most likely I did.

Q. And have you got it?

A. I couldn't now tell you; I haven't it here.

Q. Have you any recollection of getting such a receipt?

A. I couldn't tell you even that.

Q. Have you any recollection as to whether it was paid at once or at different times?

A. No, sir, I have not.

Q. But you swear positively that you paid him several hundred dollars in cash, meaning you have paid fourteen or fifteen hundred dollars outside of the amounts that appear upon this ledger account?

A. I paid him several hundred dollars, as before stated, in cash.

Q. For this land?

(Testimony of H. J. Faust.)

A. For this timber on this land.

Q. And you say the reason why you didn't make any charge of any kind is because you didn't feel that the money was your own? A. Yes, sir.

Q. And whose money was it?

A. Well, Mr. Doney's money.

Q. Well, whose was it before you paid it over to him?

A. Presumably Mr. Cobban's money.

Q. Presumably? Do you mean—why do you put that word in?

A. For the reason that when the deal was consummated and closed, at the satisfactory figures, the money was paid over to us by Mr. Cobban for Mr. Doney.

Q. Well, who determined the satisfactory figures?

A. The two parties.

Q. Did they meet, to your knowledge?

A. No, sir, not that I know of.

Q. Well, how did the two parties arrange it, then?

A. I have already explained that.

Q. Well, how?

By Mr. WALSH.—Well, he wants you to explain it two or three times.

A. Mr. Cobban made a statement to us as to what he would pay Mr. Doney, and Mr. Doney accepted that amount.

Q. Well, how much was that?

A. Well, I told you that I couldn't remember the exact figures.

Q. Well, could you come anywhere near the amount?

(Testimony of H. J. Faust.)

By Mr. WALSH.—He has already stated all about that.

Q. You don't know whether it was one thousand dollars or two thousand dollars?

A. Something over two thousand dollars, as near as I can recollect.

Q. Are you sure it was over two thousand dollars?

A. Yes, sir.

Q. You swear to that? A. Yes, sir.

Q. And that is represented by the nine hundred dollars that appears on the book there, and the amount of money that you paid them in cash? A. Yes, sir.

By Mr. WALSH.—Well, that fact has already been explained, and is pretty clear.

Q. Well, how much money did you obtain from Mr. Cobban? A. I don't recollect.

Q. You don't recollect whether he delivered it in person or whether he left it with you, or whether he deposited a check in the bank at Missoula for you to draw on. You don't remember any of those matters?

A. He might have sent us a check for the amount, or he might have deposited it in the bank, I couldn't tell you that.

Q. Was he in the habit of doing either?

A. Yes, sir.

Q. And that is what—you would draw on the bank for the amount that had been deposited there by him?

A. If we wanted to, yes.

Q. Now, you said yesterday that you didn't know

(Testimony of H. J. Faust.)

whether the Doneys paid the money into the land office or not, or whether you did. What have you to say this morning?

By Mr. BICKFORD.—I beg your pardon. The witness said that he didn't remember, and when he went upon the witness-stand again, having thought of the matter, he stated that his recollection then was that he paid it into the land office at the request of Mr. Doney and his wife.

By Mr. WALSH.—Yes, he volunteered himself to give you just exactly the information that you are now asking for.

Q. You took this money over with you and paid for the land?

By Mr. WALSH.—He answered that also.

A. I don't remember whether I handed the check to Mr. Doney at the time we left the store, and he afterwards handed it back to me at the land office, or whether I carried it in my pocket. I would consider that part immaterial, at any rate.

Q. Well, whose money was it?

A. Well, Mr. Doney's money at that time, because he had negotiated for it.

Q. With whom?

A. With the firm of Jakways & Faust.

Q. And when was he to pay it back?

A. At any time he seen fit.

Q. How much interest did he pay you on it?

(Testimony of H. J. Faust.)

A. I don't now remember; our notes usually call for ten per cent.

Q. Did you have printed forms of notes that you used when you made loans to Doney and your other customers? A. Printed in part, yes.

Q. And they paid you ten per cent interest?

A. That is our usual rate if interest is charged.

Q. Well, did you make loans without charging interest? A. We did sometimes.

Q. Why?

A. Why, for the accommodation of our customers.

Q. Well, why did you loan money sometimes to your customers and charge interest, and at other times not charge interest?

A. It depends a good deal upon the length of the time of the loan.

Q. Well, is it—is the time fixed as a rule, when they are to pay it back?

A. Certainly, on the note.

Q. Well, when they don't give a note, is the time agreed upon then?

A. Yes, sir; very often; not always.

Q. Then you have three different kinds of ways of making loans, with notes and without notes, and with the time fixed and the time left open.

By Mr. WALSH.—And two other kinds. With interest and without interest.

A. Yes, sir, if you desire to have it that way.

Q. Well, how was it with the Doney notes?

(Testimony of H. J. Faust.)

A. I don't now exactly remember.

Q. You don't know whether he gave you a note or not?

A. I think I stated yesterday that it was my opinion that he gave a note.

Q. And that is as strong as you desire to put it?

A. Yes, sir.

Q. And was it with or without interest?

A. If he gave a note, certainly, with interest.

Q. Do you remember when the time was fixed for paying it back? A. I do not now, no, sir.

Q. Had you ever made him any loans within a year or two, before that, excepting a few dollars?

A. I do not now remember.

Q. Do you recollect of having loaned him any money since that kind of any kind?

A. We have loaned him small amounts, to the best of my recollection.

Q. Well, do you know whether you had received information from Mr. Cobban, at the time you left Helena —left Ovando for Helena, and the amount that he was to be paid?

A. I told you yesterday that I did not recollect the exact dates as to the information.

Q. Well, you cannot remember anything about that, as to whether it was before going to Helena, or after you returned from Helena?

A. I stated yesterday that I thought it must have

(Testimony of H. J. Faust.)

been after I returned from Helena that the information was forthcoming.

Q. Have you any recollection as to how that information came?

A. I told you yesterday that I did not, but presumably, by letter.

Q. You have no knowledge of the existence of that letter, have you? A. No, sir.

Q. And you have no knowledge of what the letter contained, if you did receive one?

By Mr. WALSH.—That was all gone into yesterday, and the witness testified fully concerning that.

By the WITNESS.—Yes, sir.

Q. Well, you knew at the time that Doney didn't have any money at all to buy these timber claims, did you not?

A. I did not; I never asked Mr. Doney as to his financial circumstances.

Q. And you didn't know what his financial circumstances were? A. Not to the very cent, no, sir.

Q. Well, did you know generally?

A. Yes, sir.

Q. Well, did he have any money to pay for this land?

A. He might have; I couldn't say as to that.

Q. Did you know of his having any?

A. No, I did not.

Q. But you are positive that he didn't pay you, although he would like to take up the claims, he didn't have any money to pay for them?

(Testimony of H. J. Faust.)

A. I don't think Mr. Doney, or anybody else would have borrowed money to take up claims if they had money of their own to the amount that they needed.

Q. But you had no talk with him on the subject?

A. Nothing further than he desired to borrow this amount of money.

Q. Well, that is what I asked you.

A. Yes, sir.

Q. Then you did have a conversation with him in regard to the money, and for what purpose he was going to use it?

A. Well, he undoubtedly stated all the time the purpose that he was going to use it for. He probably said that at the time. I don't know that I questioned him, though, on that subject.

By Mr. BICKFORD.—This testimony gave on yesterday, and it has all been gone into.

By Mr. MAYNARD.—I don't want to have any misunderstanding about this matter in any way.

By Mr. WALSH.—Counsel wants to see if you won't say it differently to-day.

Q. Mr. Faust, I read from Mr. Doney's testimony, on page 1521, of the record. Mr. Doney says: "I didn't have any money to prove up on it, and as I understood that they were selling timber land and some were buying timber around there, I went to Mr. Faust, and told him that if he would advance me the money I would

(Testimony of H. J. Faust.)

prove up on the land as soon as I could and being as I had been there so long I could do it right away.

"Q. That is the man that runs the store up there?

"A. Yes, sir.

"Q. Well, go on.

"A. He said that was all right." Is that true?

By Mr. WALSH.—We object to that upon the ground that it is not proper cross-examination.

A. As near as I can judge by that, I think Mr. Doney must have referred to his homestead.

Q. In the same answer, he says: "I had been accustomed to getting money there, that is, certain small sums. During that time these fellows were all hunting timber around there. I had been living around that country so long and as it was possible to get a claim on these timber lands and I knew it, and was acquainted with the lands as much as any man there, I told him I believed I would file on a piece of timber land." Do you think still that that was for his homestead?

By Mr. WALSH.—We object to that upon the ground that it is not proper cross-examination.

A. No, he might—he undoubtedly intended to convey the idea that he knew where the timber lands were.

Q. On page 1545, of Volume 3, of Mr. Doney's testimony, he was asked "how much money was paid into the land office."

"A. I don't know.

"Q. You don't know how much?

"A. No, sir.

(Testimony of H. J. Faust.)

"Q. Why don't you know?

"A. Because I told him I would take twelve hundred dollars for it and he to pay all of the expenses.

"Q. So you didn't pay any money into the land office yourself, for yourself or your wife?

"A. No—I had—I did in one way, I made arrangements with Mr. Faust to settle all that business, and you can call it paying it to me, it makes no difference to me what you call it.

"Q. You made arrangements with Mr. Faust to prove up, did you? A. Yes, sir.

"Q. And pay all the expenses of proving up?

"A. Yes, sir.

"Q. For yourself and wife? A. Yes, sir.

"Q. So that as a matter of fact you received no money and had no money of any kind, either for yourself or for your wife until you and your wife conveyed and sold the land?

"By Mr. WALSH.—We object to that as being leading.

"A. I will answer it if you want me to.

"Q. Well, what is it?

"A. I borrowed the money.

"Q. Yes, but answer that question that I put to you.

"A. No, sir, I had money before that, I borrowed the money.

"Q. Just read the question and answer just a moment before, Mr. Cooper, please, to where he made ar-

(Testimony of H. J. Faust.)

rangements with Mr. Faust to pay all expenses and to pay for the land. (The matter referred to by counsel was read by the stenographer.)

"Q. You said that you made arrangements with him to pay all expenses and to pay for the land, Mr. Doney?

"By Mr. WALSH.—We object to that as being leading.

"Q. And he did it?

"By Mr. WALSH.—We object to that as being leading.

"A. Well, you will see in the first place that I told him that if he would loan me the money to prove up on my land I would take up a timber claim.

"Q. But he paid the money himself into the land office? A. I suppose he did.

"Q. Both for yourself and your wife?

"A. Yes.

"Q. And he paid all the expenses?

"By Mr. WALSH.—We object to that as being leading.

"A. Paid all—of course he paid all the expenses as I considered, borrowed the money to pay it.

"Q. And after he had paid all the expenses and paid the purchase price who received the receiver's final receipt?

"By Mr. BICKFORD.—We object to that as irrelevant and immaterial and hearsay.

"A. He did this just the same as I supposed. Mr.

(Testimony of H. J. Faust.)

Faust had it. I told him to handle my business and he got it.

"Q. He got it, did he? A. Yes, sir.

What have you to say as to that testimony, Mr. Faust?

By Mr. WALSH.—You need not answer that question, Mr. Faust.

By Mr. MAYNARD.—For what reason?

By Mr. WALSH.—It is not proper cross-examination.

By Mr. MAYNARD.—I submit, if your Honor please, that I am entitled to an answer to that question.

By Mr. WALSH.—We submit that it is not a proper way to cross-examine any witness.

By the EXAMINER.—Well, if you want me to say what I will do, I will say to you that it is not the practice in Montana to put questions that way, and that question would not be permitted.

By Mr. MAYNARD.—I didn't know that we were confined to the practice in Montana.

By the EXAMINER.—Well, it is the practice that governs the United States Court in the State of Montana. There is nothing to the contrary in the statutes of the State.

Q. I call the witness' attention to page 1545, of volume 3, of the record in this case, to Mr. Doney's testimony, and to the signature thereto, at the end of his testimony, which is subscribed and sworn to by him be-

(Testimony of H. J. Faust.)

fore "me this sixth day of March, 1902, Henry N. Blake, Examiner," and I call your attention to the answer of Mr. Doney: "Because I told him I would take twelve hundred dollars for it and he to pay all of the expenses." Was Mr. Doney mistaken in that?

A. I don't remember of any such conversation.

Q. Well, as a matter of fact, if Mr. Doney did take twelve hundred dollars for it, if he and his wife conveyed these claims in this deed and he took twelve hundred dollars for it, what have you to say as to that?

A. I don't know what he did.

Q. Well, if as a matter of fact he did, as he swears, then what have you to say as to having paid him twenty-five hundred dollars?

A. Nothing further than I have already stated.

Q. I show you the testimony of Mr. Doney, on pages 1548 and 1549, from which I read. Will you please follow me, Mr. Faust while I read?

"Q. But did you finally sell it to Mr. Cobban?

"A. Well, I sold it, but I don't know whether he was in it or not.

"Q. You got a hundred dollars for it?

"A. I don't know whether I did or not. I got twelve hundred dollars for my wife's timber claim and my own.

"Q. How much money did you receive?

"A. Twelve hundred dollars.

"Q. Did you receive it in cash or in a check?

"A. I didn't receive any check.

"Q. Did you receive money? A. Yes, sir.

(Testimony of H. J. Faust.)

"Q. How much money did you receive?

"A. Twelve hundred dollars.

"Q. You swear that you received twelve hundred dollars? A. Yes, sir.

"Q. What do you mean by that?

"A. Twelve hundred dollars.

"Q. Who paid you the twelve hundred dollars?

"A. Faust.

"Q. Faust himself? A. Yes, sir.

"Q. Paid you twelve hundred dollars?

"A. Yes, sir.

"Q. In cash?

"A. In cash. Just left it at his store for me to use as I wanted it for necessities and I bought things and gave him an order on my account for goods as long as the twelve hundred dollars lasted and more too, I suppose, if I had asked him.

"Q. Did you ever receive any money yourself at the time, or did you receive any money at the time yourself in cash? A. No, sir.

"Q. You did not?

"A. No, sir; I did not; I didn't ask him for it. I got money at different times, if I wanted twenty or twenty-five or fifty dollars or anything of that kind I went and got it. It was over a year before I got all of it. Not that I couldn't get it if I wanted it. I could have got it if I demanded it.

"Q. When you and your wife conveyed this land to

(Testimony of H. J. Faust.)

Mr. Cobban I ask you now did you on that date either of you, to your knowledge, receive any money.

"By Mr. WALSH.—We object to this for the reason that it has been answered at least four separate and distinct times and each time in the same way.

"Q. You say you did not? A. No, sir.

"Q. When was the first time after you sold the land to Mr. Cobban that you received from Jakways and Faust any money?

"A. Well, just—that is a pretty hard question for me to answer. You see I told you that whenever I wanted any money I could go and get it. That it has been a custom for me to get money there, if I wanted that money why I could get it. My account has been running that way right along. I don't know whether I got it off the timber or on my face or what. That is just the circumstance.

"Q. You don't know whether you were getting this money from Jakways and Faust on the timber or on your face? A. No, sir.

"Q. It might have been given to you in goods?

"A. Yes.

"Q. You might have been getting it on your face?

"A. Oh, I suppose I was getting it on my account.

"Q. Getting it on your account? A. Yes, sir.

"Q. Or on your face? A. Yes, sir.

"Q. Well, how much money did Jakway and Faust loan you on your face?

(Testimony of H. J. Faust.)

"A. I don't know, a great many dollars. I paid out a good deal at different times. I paid him a good deal too, and I used to get money of him occasionally.

"Q. I mean since you conveyed this land to Cobban.

"A. Paid me twelve hundred dollars.

"Q. Well, I asked you what was the first sum of money you received the first time after you and your wife conveyed the claims?

"A. I didn't get that. I didn't get a dollar more; it was left to my account and I got instead what I wanted. He is a merchant and we deal there and buy what things we want there, and if I wanted money the money was left there for my use, and it might have been two or three weeks. I don't know whether I got it until one or two or three weeks after that.

"Q. It was two or three weeks, was it?

"A. Well, I don't know whether it was two or three weeks or what it was.

"Q. Well, when was the first time that you asked him for money?

"A. Well, it must have been six weeks after that that I bought a horse and wagon and issued an order for it.

"Q. Who did you issue the order to?

"A. I issued the order to Bob Dixon.

"Q. You bought a team of horses from the saloon-keeper, Bob Dixon and gave him an order on Jakways and Faust? A. Yes, sir.

"Q. How much did you issue the order for?

(Testimony of H. J. Faust.)

"A. For a hundred and sixty-five dollars.

"Q. For a hundred and sixty-five dollars? And that was about six weeks after the sale of the claims you think? A. I think so.

"Q. Well, now name the next time.

"A. Oh, well, I can't do that.

"Q. When was the second time?

"A. I don't know 'good gosh.' I had an account there and I didn't keep account of all the little items I ordered. I would have to get his accounts. I have got quite a few. It didn't lay there idle very long before I got some things out of it.

"Q. Well, when was the third time?

"A. Well, I couldn't tell that. I couldn't tell at all. I couldn't tell when I got it I am sure.

"Q. Well, now state to the Court when it was that either you or your wife received any money from Jakways and Faust on this account except this hundred and sixty-five dollars on the order that they recognized and honored.

"A. That I received any money—why the only time I received any money was on the timber land as I said before. But I couldn't tell when I got anything else there. I couldn't tell the date of it. I know I got it pretty soon. I got a little money off and on all the time.

"Q. Can you name any sums that you received?

"A. Well, I cannot name all, but I can tell you one.

"Q. Well, what was it?

(Testimony of H. J. Faust.)

"A. Well, I got fifty dollars another time.

"Q. Well, when was that?

"A. I couldn't tell you. I couldn't tell you that.

"Q. Well, how long after this sale?

"A. Well, I guess about three months.

"Q. Well, name another one.

"A. That is all.

"Q. That is, this hundred and sixty-five dollar order and the fifty dollars in cash? A. Yes, sir.

"Q. And you cannot name another?

"A. Well, I got a dollar's worth of sugar once in a while and things of that kind, and a thousand dollars wouldn't last very long after buying machinery and so on for a place like that and a large family.

"Q. Well, besides this order and this fifty dollars in cash and this dollar for a sack of flour, etc.—sugar, what else can you name?

"A. That is all. I got it all.

"Q. What is that?

"A. I got the twelve hundred dollars all right."

Q. Now, then, what have you to say, after having seen and heard that testimony of Mr. Doney, as to whether you paid Mr. Doney more than twelve hundred dollars?

A. Nothing than I have already stated—further than I have already stated.

Q. Do you still think that you paid them twenty-four hundred or twenty-five hundred dollars?

(Testimony of H. J. Faust.)

By Mr. BICKFORD.—He never has said that, because the witness has never stated that he paid Mr. Doney twenty-four or twenty-five hundred dollars.

Q. Have you any answer to that question, Mr. Faust?

A. At different times to that aggregate amount.

Q. But you have nothing to show for it?

A. No, nothing except as I have already stated.

Q. All right, sir. This deed was made on the 17th day of August, and you and the Doneys were in Helena on the 14th of August.

By Mr. WALSH.—Wait a moment. What deed do you refer to, Mr. Maynard?

By Mr. MAYNARD.—The deed that I have called his attention to; the deed to Mr. Cobban.

By Mr. WALSH.—Then we object to that upon the ground that it is entirely immaterial, and it is a deed to Mr. Doney's homestead, and not to his timber claim at all.

By Mr. BICKFORD.—Perhaps we had better object to that upon the other proposition also, that none of the land mentioned and described in the deed is mentioned or described in the bill of complaint filed herein, as being a part of the cause of action of the Government of the United States against the defendant herein, and or that reason also, it is wholly irrelevant and immaterial.

(Testimony of H. J. Faust.)

By Mr. WALSH.—At the same time we want to remind the counsel that the witness upon the stand has already testified about the purchase of this homestead claim by Mr. Cobban, as well as the timber claims, and for which they were sold for twenty-four or twenty-five hundred dollars.

By Mr. MAYNARD.—I know that it is all in one transaction.

A. Yes, sir, I have not separated them in any way, shape or manner. When I testified to the total amount that was paid, I took into consideration also the timber that Mr. Doney had sold, the conveying of both their timber claims, and also the timber on their homestead.

Q. And what you have testified to was that the two timber claims and the timber on the homestead of Mr. Doney, was conveyed? A. Yes, sir.

Q. And it was all in one deal, was it not?

A. I couldn't say that it was; I couldn't now say about that.

Q. Still you have no recollection of any other deed?

A. I wouldn't say; no, sir.

Q. You have no recollection of more than one transaction, have you?

A. There might have been other deeds, I couldn't now say as to that.

Q. I show the witness Complainant's Exhibits Nos. 121, 123, and 122. Will you please examine them and

(Testimony of H. J. Faust.)

see if they were not all executed on the same day, before you, Mr. Faust?

By Mr. WALSH.—The deeds are the best evidence of that fact, and therefore we object to that question.

A. According to these deeds, they were.

Q. And those three deeds describe the two timber claims and the timber growing on the homestead, did they not?

By Mr. BICKFORD.—We object to that upon the ground that the witness has no knowledge of the descriptions of the land, and he cannot remember the description of the land, and does not know whether the deed describes the land correctly or not.

A. I couldn't say, I don't remember the descriptions.

Q. Now, how did it happen, Mr. Faust, that you had these people on the 14th in Helena, and paid this money into the land office for them, and paid all the expenses connected with the entry, that in three days thereafter they conveyed the land to Mr. Cobban?

By Mr. BICKFORD.—We object to that upon the ground that the witness has not testified that he paid all the expenses of the entrymen and entrywomen connected with their entries as the case may be in this case?

A. In answer to the first part of your question, I would say that I do not consider that I take these people, to Helena, and paid all their expenses, as I was simply asked by them to go there as a witness, and as

(Testimony of H. J. Faust.)

far as conveying is concerned, three days afterwards, they had ample time to get home and do so, if they cared to.

Q. You did not expect that these people would pay on their return, did you?

A. I had no idea that they would, as near as I can now remember.

Q. Well, have you any idea how it is that they did convey to Mr. Cobban at the time?

A. Nothing further than I have before stated.

Q. When that first came to your mind, you don't know? A. No, sir.

Q. You had no talk whatever in any way with Mr. Doney about his selling the land after he proved up?

A. We might have talked it over on our way home from Helena, I don't remember that.

Q. Well, you might have talked it over with him on your way to Helena, might you not?

A. I couldn't say; I hardly think so, as I am not in the habit of making bargains for something that they have no right to convey.

Q. You knew what he was going to Helena for, did you not? A. Yes, sir.

Q. And you knew that shortly thereafter the receiver's final receipt would be issued?

A. Yes, sir, I expected it would.

Q. And knowing that fact, you had no talk whatever with the Doneys about selling after they had obtained the receiver's final receipt?

(Testimony of H. J. Faust.)

A. I have already answered that question.

By Mr. MAYNARD.—I now offer in evidence the account of Albert F. Muchmore, which is found on page 245, of the ledger produced by the witness, as being the ledger of the firm of Jakways & Faust, of which the witness is a member, and I ask that the same be copied into the record by the stenographer. Said account is as follows:

July 4/15, cash, page 29	443.50
Aug. 1/14, cash, page 31/32	22.50
Sep. 2/14, cash, page 34	18.50
Oct. 26, cash, page 38	1.00
Nov. 9/13, cash, page 40/41	31.00
Dec. 7/16, cash, page 44/45	22.00
Dec. 31, sund., page 195/203	370.63
1900.	
Jan. 31, cash, page 47/48	11.75
Feb. 28, cash, page 49/50	10.50
Mar. 3, cash, page 51	.50
Apr. 2/4, cash, page 54	16.00
June 30, cash, page 58/59	23.00
July 31, cash, page 61	2.00
Aug. 6th, cash, page 62	.50
Sept. 25, cash, page 66	400.00
Oct. 24, cash, page 68	30.00

(Testimony of H. J. Faust.)

Nov. 30, cash, page 71..... 13.00

Dec. 31, cash, page 73..... 16.40

Sund. page 204/215..... 36.15

Mdse., page 219..... ..... 192.53

"Cr.

1899.

Aug. 8/19, cash, page 31/32..... 502.25

Sep. 22, cash, page 35.....1000.00

Nov. 11, cash, page 40..... 25.00

Dec. 31, labor, page 202..... 530.00

1900.

Jan. 31, cash, page 47/48..... 11.00

Apr. 12, cash, page 54..... 5.00

Dec. 31, labor, page 204/215..... 500.00

"Cr.

1899.

June 17, balance, page 42..... 298.79

Aug. 1, cash, page 31..... 290.00

Nov. 24, cash, page 42..... 143.18

Dec. 19, cash, page 45..... 230.50

Dec. 31, Willis Dilts, page 200..... 170.00

1900.

Apr. 25, cash, page 55..... 43.00

July 2, cash, page 60..... 90.00

Aug. 24, cash, page 63..... 2.40

(Testimony of H. J. Faust.)

Oct. 13, cash, page 67..... 167.50
Dec. 1, cash, page 72..... 79.00
Dec. 31, sund., page 204/215..... 443.50

Q. Turn to the account of Mr. Louis S. Jakways, that is the clerk, is it?

A. Yes, sir, Louis S. Jakways.

By Mr. MAYNARD.—I offer in evidence the account of Louis S. Jakways, appearing on page 119, of the ledger produced by the witness, as follows:

"Dr.

1899.

Jan. 14/26, cash, page 16/17..... 4.50
Feb. 6/18, cash, page 18/19..... 232.15
Apr. 13/24, cash, page 22/23..... 30.00
May 5/25, cash, page 24/25..... 46.00

By Mr. MAYNARD.—We now offer in evidence the account of Nels Opsata, which appears on page 43, of the ledger produced by the witness, as follows:

"Dr.

1899.

June 17, cash, page 28..... 25.00
Aug. 1, cash, page 31..... 8.00
Sep. 14, cash, page 34..... 10.00
Sep. 15, cash, page 35..... 465.00
Sep. 20, cash, page 35..... 18.95
Nov. 24/30, cash, page 42/43..... 53.31
Dec. 19, cash, page 45..... 10.00

(Testimony of H. J. Faust.)

Dec. 29, cash, page 46	10.00
Dec. 31, sund., page 195/203	47.00
1900.	
Feb. 24, cash, page 50	15.00
Mar. 24, cash, page 52	97.40
Apr. 17, cash, page 55	21.25
May 19, cash, page 57	10.00
Jun. 30, cash, page 58/59	2.10
July 31, cash, page 60/61	4.05
Aug. 31, cash, page 64	61.80
Sep. 14, cash, page 65	160.00
Oct. 5, cash, page 67	.38
Nov. 26, cash, page 71	55.13
Nov. 8/14, cash, page 69	240.00
Dec. 31, cash, page 72/73	10.55
Sund., page 204/215	107.42
Mdse., page 216	1040.92

"Dr.

1898.	
Jan. 1, balance	8.75
Feb. 20, cash, page 64	40.00
Feb. 28, S. B. M., page 183	61.45
June 30, C. A. J., page 187	.25
1899.	
July 1, cash, page 29	5.00
Aug. 30, cash, page 33	445.00
Sep. 13, cash, page 34	20.00
Oct. 2, cash, page 37	75.00

(Testimony of H. J. Faust.)

1900.

Mar. 24, cash, page 52..... 20.00
Dec. 8, cash, page 72..... 10.00
Dec. 31, sund., page 204/215..... 4.26
Mdse., a/c sund., page 221..... 116.99

"Cr.

1898.

Feb. 18, cash, page 64..... 111.95
July 3, cash, page 1..... 10.00
Dec. 31, cash, page 15..... 11.10

1900.

Sept. 12, cash, page 65..... 50.00
Dec. 13, cash, page 10.00
Dec. 31, frt. & Exp., page 214..... 25.40
Mdse, a/c sund., page 221..... 540.00

By Mr. MAYNARD.—We now offer in evidence the account of Guy W. Muchmore, which appears on page 244, of the ledger produced by the witness, as follows:

"GUY W. MUCHMORE.

"Dr.

1898.

Jan. 1, balance..... 2.05

1899.

Oct. 2, cash, page 37..... 460.00

1900.

Dec. 31, mdse, page 221..... 10.15

"Cr.

(Testimony of H. J. Faust.)

1900.

Mar. 5, cash, page 51..... 2.50
Dec. 31, mdse., a/c sund., page 221..... 460.00

By Mr. MAYNARD.—We now offer in evidence the account of A. F. Muchmore, which appears on page 245, of the ledger produced by the witness, as follows:

Q. Where is Oliver W. Muchmore?

A. Oliver E. Muchmore.

Q. Yes, sir, Oliver E. Muchmore?

A. We have him under the name of Ed. Muchmore, in our books.

By Mr. MAYNARD.—We now offer in evidence the account of Oliver E. Muchmore, which appears in the ledger as Ed. Muchmore.

"Dr.

1899.

Aug. 30, cash, page 33.....$845.00
Sept. 14, cash, page 34..... 46.33

1900.

May 29, cash, page 57..... 2.00
June 30, cash, page 59..... 26.61
July 30, cash, page 61..... 5.00
Aug. 31, cash, page 62/63..... 7.00
Sep. 24, cash, page 66..... 15.00
Oct. 16, cash, page 67/68..... 14.00
Nov. 3, cash, page 69..... 1.00

(Testimony of H. J. Faust.)

Dec. 31, R. K. P., page 210..... 46.50
Mdse., page 224..... 717.27

"Cr.

1898.
Dec. 31, cash, page 15..... 11.60
1899.
Nov. 10, cash, page 40..... 1.25
Nov. 30, cash, page 41.....1045.00
1900.
Dec. 31, Frt. & Exp., page 204/215..... 462.30

Q. Now, will you please turn to the ledger account of Mr. Hoyt?

A. Which Hoyt? E. W. Hoyt?

Q. Yes, sir.

By Mr. MAYNARD.—I also offer in evidence the account of Elijah W. Hoyt, which appears on page 405 of the ledger.

"Dr.

1898.
Aug. 27, cash, page 4..... $50.00
1899.
Aug. 29, cash, page 33.....$800.00
Aug. 31, cash, page 33..... 20.00
Dec. 29, cash, page 34/46..... 895.00

"Cr.

1898.
Sept. 17, cash, page 6..... $50.00
Dec. 25, cash, page 45..... 5.00

(Testimony of H. J. Faust.)

1899.

Sept. 25, cash, page 74..... $120.00

Dec. 31, sund., page 202.....$1590.00

Q. Have you got an account with Mrs. Charlotte S. Hoyt, his wife?

A. No, sir, that was included in the account of Elijah W. Hoyt.

Q. Now, will you please refer to the accounts of the Muchmores?

A. Yes, sir, there is Guy Muchmore.

Q. I wish you would refer to Mr. Stewart's account.

A. Mr. Alfred Stewart?

Q. Yes, sir; Mr. Alfred Stewart's account.

(The witness produced ledger in use by the firm of Jakways & Faust, and found the account requested by counsel.)

By Mr. MAYNARD.—I now offer in evidence the account of Alfred Stewart, which is found on page 118, of the ledger, as identified by the witness.

"Dr.

1899.

June 19th, cash, page 28..... $25.00

Sept. 15, cash, page 35.....$400.00

Dec. 5, cash, page 44..... 3.00

Dec. 31, H. J. F., page 209..... 1.40

M. McC., page 214..... ..... .60

Mdse., page 219..... .....307.00

"Cr.

(Testimony of H. J. Faust.)

1899.

Feb. 16, cash, page 18		$18.00
Dec. 9, cash, page 44		$401.50
31, Ranch, page 213		65.00
Mdse., page 219		73.90

By Mr. WALSH.—Now what—why do you want that?

By Mr. MAYNARD.—Why do I want that?

By Mr. WALSH.—Yes, sir. Mr. Jakways' claim is not in controversy in this action at all.

By Mr. MAYNARD.—Mr. Jakways, if your Honor please—

By Mr. WALSH.—Now, there isn't any of this matter that has anything at all to do with the cross-examination of this witness; it has no place in here at all. I don't care to object to the accounts of these other parties going into the record, because their claims are in controversy in this action, but Mr. Louis S. Jakways' claim is not in controversy here, and it is not made the subject of controversy in here in any way, shape or manner, and I don't see why this account should be exposed to the criticism of counsel, when it has got no place in the record.

By Mr. MAYNARD.—Now, let me see if I can relieve myself of the charge which you make that this testimony has no bearing on this case. Mr. Louis S. Jakways was a witness that was offered here by the defense, he went on the stand and testified at length as to his dealings with the firm, and stated at full length the facts and circum-

(Testimony of H. J. Faust.)

stances connected with the purchase of his claim, and where he got his money, and to whom he sold the land, and where he got credited for the sale to Cobban, all of which he said appears upon the books of the firm of Jakways & Faust, in his account.

Now, then, gentlemen, I offer the account in evidence for the purpose of meeting that testimony, and showing by the books of the firm of Jakways & Faust, that the testimony which he gave was not true.

By Mr. WALSH.—Now let me say that in the course of the testimony of Mr. Griswold, he repeatedly said that Mr. Jakways has said thus and so, and that he had said thus and so, to Mr. Jakways, without designating whether it was Mr. Charles A. Jakways, a member of the firm of Jakways & Faust, or Mr. Louis S. Jakways, who was in the employ of Jakways & Faust, and who was upon the stand, and the only questions that were put to him on direct examination, and he was simply asked whether Mr. Griswold had made those statements to him. You yourself, upon the cross-examination of Louis S. Jakways, went into the question with him of the facts and circumstances attendant upon the sale of his land to Mr. Cobban. You did not confine the cross-examination to our direct examination. How this can be material to the direct examination of the witness, under these circumstances, I cannot understand. If his claim was in controversy here, and you were inquiring into that matter, and it involved the condition of his account, it would

(Testimony of H. J. Faust.)

be a different thing, but as it is now, it is utterly immaterial to any material averment in the bill of complaint in this action. Now, Mr. Bruner, for instance has been mentioned in this case. Mr. Bruner sold his land to Mr. Cobban, and Mr. Bruner was paid the money through Mr. Faust, but you have made no inquiry as to his account.

By Mr. MAYNARD.—I desire to have this put upon the record, because I desire to treat with the most profound respect, the gentleman that has made the objection, and because I feel that his objections are always worthy of consideration, for he evidently seems, at least, to urge this objection in good faith, and I want to meet it, if I can, and state it fairly upon the record.

By Mr. WALSH.—Now, Mr. Maynard, there is no occasion for going into that proposition, because if you want it into the record, we are not going to ask the Examiner to exclude it and not require the matter to go in, but we do feel that it is not proper cross-examination.

By Mr. MAYNARD.—Well, I wanted to convince you, in the first place, and I wanted to relieve myself of the charge that you seem to have in your mind, that the account of Mr. Louis S. Jakways has no place in the record.

By Mr. WALSH.—You cannot convince me, though, that it has any place whatever in the record.

By Mr. MAYNARD.—Well, I wanted to explain it, so that you would understand the proposition.

(Testimony of H. J. Faust.)

By Mr. WALSH.—I understand the proposition, but you cannot convince me that it has any place in the record, because it appears to me manifestly improper.

By Mr. MAYNARD.—The theory of the Government, Mr. Walsh, is that this man Louis S. Jakways, was connected with this firm of Jakways & Faust, as one of its employees.

By Mr. WALSH.—I understand that.

By Mr. MAYNARD.—And that he was a brother of one of the partners, and that he made this deal and bought this land, and in making this deal he got this money, as he claimed, from Jakways & Faust.

By Mr. WALSH.—Well, what has that got to do with the case?

By Mr. MAYNARD.—Simply for the purpose of impeaching the testimony of the witness, Louis S. Jakways.

By Mr. WALSH.—But you would have to impeach the credibility of the witness upon a material matter. Now, you cannot attack the credibility of a witness upon an immaterial matter. The question in this case is, was his claim one that was entered legally? That would be a material matter in this case, if the entry was attacked in the bill of complaint.

By Mr. MAYNARD.—Very well; if that isn't clear in your mind, I expected to be able to convince you that the account is properly a matter of inquiry in this case.

(Testimony of H. J. Faust.)

By Mr. WALSH.—I object to it going into the record at all, because it is manifestly irrelevant and immaterial; but, as I said before, we shall not ask the Examiner to exclude it, or to prevent counsel from putting it into the record.

Q. Do you recollect who paid for this land of May Hawthorne's?

A. As near as I can recollect, the transaction was entirely with Mr. C. A. Jakways.

Q. Now, will you be kind enough to tell me if the ledger account shows any entry in reference to it?

A. I think it shows a debit and a credit, in one place, to Mrs. Hawthorne.

Q. Where is that?

A. For part of the money.

Q. Where is that place, Mr. Faust?

A. On page 415, of the Ledger.

Q. You may read that, Mr. Faust.

A. (Witness reads:)

"MAY HAWTHORNE.

October 2d, 1899. Cash, page 37, $200.00. March 31st, 1900, C. A. Jakways, Page 205, $200.00.

Q. Now, will you be kind enough to turn to Mr. C. A. Jakways' account? A. Yes, sir.

Q. Haven't you got this charge in here, the two hundred dollar item. I call the witness' attention to the entry on page 26, of the Ledger referred to, the year 1900, 3/31, Mrs. May Hawthorne, page 205, $200.00. Now, can you explain that bookkeeping?

(Testimony of H. J. Faust.)

A. Yes, sir; I think so.

Q. Well, please do so, Mr. Faust?

A. Now what one do you want?

Q. The charge—you charge Mrs. May Hawthorne with $200.00, do you not? A. Yes, sir.

Q. And then to balance that you put in the charge on the other side of the ledger, "March 31st, 1900, C. A. Jakways, page 205, $200.00." A. Yes, sir.

Q. And then charge it up on the same date to Charles A. Jakways' account, $200.00. A. Yes, sir.

Q. So that as a matter of fact it stands on your books that Mr. Jakways paid out two hundred dollars on account of his sister?

A. No, sir; that doesn't show any of that fact.

Q. What does it show?

A. It shows that Mrs. May Hawthorne, in the first place, was paid cash, two hundred dollars; that afterwards, under the direction of Mr. C. A. Jakways, her account was credited with the $200.00 for the reason that Mr. C. A. Jakways had her money to invest as he saw fit.

Q. Why was it charged to him?

A. I have already answered that question, I think, in my answer just given.

Q. Well, I would like to have you answer it so that I can understand it, if possible.

A. Why can you not understand it? I stated particularly what it was, and then I explained it in full.

Q. Well, she got two hundred dollars from your firm, did she not?

(Testimony of H. J. Faust.)

A. I was directed by Mr. Charles A. Jakways to pay Mrs. May Hawthorne two hundred dollars.

Q. And the date of that charge of two hundred dollars is what? A. On the second day of October, 1899.

Q. And that same sum of two hundred dollars was charged up on the same day that you credit her and charge to Mr. C. A. Jakways?

A. As per his order.

Q. Certainly. Do your books show any other transactions with Mrs. May Hawthorne?

A. No, sir; not that I know of.

Q. Mr. Jakways had entire charge of that deal, did he not?

A. I presume he did, I never questioned it.

Q. And in the Stewart matter, where you went out and took his acknowledgment, that was all gratuitous on your part, and you didn't know anything about the dealings at all?

A. No, sir; I believe Mr. Jakways had charge of that deal.

Q. Why did you go out to take his acknowledgment?

A. Well, I presume upon request; I do those things qu'te often.

Q. Now, then, Mr. Faust, during this whole transaction, you never heard from Mr. Cobban or Mr. Jakways the arrangement that he was making with these people that they were to enter lands for him, and after they had made their final proof, they were to convey to him?

A. I know of no such arrangement.

(Testimony of H. J. Faust.)

Q. You never heard of such a thing?

A. No, sir; I know of no such arrangement.

Q. In no one of these cases?

A. In no case whatever.

Q. Did you hear that Mr. Cobban was hiring people up there to make entries with an arrangement with them that after they had made their final proof and had obtained final receipts at the land office, that they were to convey their claims to him?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial and does not prove or tend to prove any of the issues in this case, and upon the further ground that it is hearsay and not proper cross-examination, and the witness has already been interrogated with reference to that mater.

A. I cannot now remember of having any such conversation.

Q. Wasn't their talk about that in the community there during that season?

A. Well, if it was, it was not talked about in my presence.

Q. Well, that is what I say, you never heard it?

A. No, sir; I never heard it, and I have already testified to that fact.

Q. And that nothing was understood between you and Mr. Cobban that deeds were to be obtained as soon as possible after final receipts were issued?

A. No, sir; no understanding to that effect.

(Testimony of H. J. Faust.)

Q. Nor anything said?

A. Certainly nothing said.

Q. And you loaned all this money to these different parties as appears in your testimony, and from their testimony, simply upon your own motion, with no arrangements whatever made with Mr. Cobban that this was to be done in his interest or for his benefit?

A. Yes, sir; never for his own benefit.

By the EXAMINER.—We will now take a recess until two o'clock.

Friday, May 2d, 1902, 2 P. M.

Hearing resumed pursuant to adjournment.

A. J. FAUST, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Faust, there were a few questions that I desired to ask you that I overlooked this morning. I call your attention to Complainant's Exhibit No. 176, which is a certified copy of the deed in evidence in this case made by Alfred Stewart and Katherine F. Stewart, his wife, to R. M. Cobban. You testified that you went out with W. P. Smith to Mr. Stewart's house for the purpose of obtaining the execution of this deed, did you not?

A. I believe I did, yes, sir.

Q. You had had some talk with Stewart previous to this time in regard to this land, had you not?

A. Not that I now remember.

Q. Just why did you happen to go out there?

(Testimony of H. J. Faust.)

A. As I have already testified, at the request of Mr. Smith as I now remember.

Q. Did you know Mr. Smith at the time that he came up to Ovando?

A. I think only upon his own introduction.

Q. Do you remember what that introduction was?

A. I could not now say whether it was oral or a letter of introduction.

Q. If a letter, from whom?

A. If a letter, presumably from R. M. Cobban.

Q. Have you that letter?

A. No, sir, not that I know of.

Q. Have you any recollection as to its contents?

A. No, sir; I am not sure that it was a letter.

Q. You knew who this Mr. Stewart was, did you not?

A. Yes, I am acquainted with Alfred Stewart.

Q. When Wallace Smith came to your store?

A. Yes, sir.

Q. How far did he live from your store?

A. I think about five miles.

Q. Do you remember the day of the week that you went out there with Smith?

A. No, sir, I do not now.

Q. Wasn't it Sunday?

A. No, sir, I don't think it was.

Q. What did Smith come to the store for?

A. As near as I can remember he had Mr. Alfred Stewart's deed for acknowledgment.

Q. And Mr. Smith lived in Missoula, did he not?

(Testimony of H. J. Faust.)

A. Yes, I understand that that is his place of residence.

Q. And he requested you to go out to Stewart's house and take the acknowledgment of Stewart and his wife?

A. I don't remember whether he requested me to go out there and take the acknowledgment, but I am satisfied that he requested me to go out with him.

Q. And you did go with him and did take the acknowledgment?

A. Yes, I believe I took the acknowledgment, according to the certified copy of the deed.

Q. Now, do you wish to be understood as saying that this was the only thing that you had to do with this transaction, simply taking the acknowledgment of Stewart and his wife? A. Yes, sir, in that case.

Q. And that Stewart had never had any conversation with you in regard to the transaction at all?

A. No, sir, not to the best of my knowledge.

Q. Why, as a matter of fact, hadn't he got his money from you to pay for this entry?

A. He borrowed some money from us, that I understood afterwards was used for that purpose.

Q. How long after the execution and delivery of the deed was it that you found that what money he borrowed was for that purpose? A. I do not know.

Q. When he borrowed the money from you, didn't he say anything to you about what purpose he wanted the money for?

A. He might have; I don't remember.

(Testimony of H. J. Faust.)

Q. What do you mean to say then, that some time afterwards you found out that it was for the purpose of paying for this land?

A. I did not say that I found out; I said that I understood that he used it for this purpose.

Q. But he had had no conversation with you at all in regard to what he was going to do with the money and anything about it?

A. Not that I can now remember.

Q. Didn't he place the matter in your hands for the sale of the timber, for the sale of the land or anything of the kind? A. No, sir.

Q. How did Mr. Cobban get the data with which to make up this deed that Mr. Smith brought up from Missoula? A. I don't know.

Q. You don't know anything about the consideration?

A. Nothing further than the deed stated, as per your certified copy there.

Q. You did not handle any of the money or have anything to do with it?

A. I think the money was eventually sent to us to be delivered over to Mr. Stewart.

Q. Have you any knowledge on the subject?

A. Nothing further than the book shows.

Q. What does the book show?

A. It shows some cash credits at or about that time.

Q. What items do you refer to?

A. December 9th, 1899.

(Testimony of H. J. Faust.)

Q. Four hundred and one dollars and fifty cents?

A. Yes, sir.

Q. And what does the other side of the ledger show?

A. It shows a cash item in September of $400.

Q. September 15th? A. Yes, sir.

Q. Have you any knowledge as to those items?

A. They show for themselves, the credits and debits that Mr. Stewart had acquired.

Q. Do you know whom he obtained the money from?

A. Presumably from myself.

Q. For what purpose? A. As before stated.

Q. What is that?

A. That, I presume, as I found out afterwards, it was to use it for making final proof on his timber and stone claim.

Q. And that is all the information you had?

A. Yes, that I can now think of.

Q. Had not, as a matter of fact, Mr. Stewart placed this matter in your hands as his agent to handle it for him and sell the timber?

A. Not in my hands, no, sir.

Q. Do you know in whose hands he had placed it?

A. I understood negotiations had been made by C. A. Jakways to that effect.

Q. When did you find that out?

A. I could give you no exact date.

Q. Who is C. A. Jakways?

A. He is my partner in business.

(Testimony of H. J. Faust.)

Q. Hadn't your partner told you of the arrangement that he had made with Stewart?

Mr. WALSH.—Objected to as immaterial and hearsay.

A. Nothing further than if Stewart wished to borrow money, to let him do so.

Mr. MAYNARD.—Just read the question before this last question.

Q. When you say that negotiations had been had with your partner, do you mean to say that all you know about it is that your partner told you to let him have the money if he wanted it?

A. That is all I now can remember.

Q. He did not tell you what the negotiations were about, or what he was going to do with the money?

A. I do not remember; he might have told me that Mr. Stewart intended to make final proof on the timber and stone claim; I cannot now recall exactly.

Q. Was there anything said about what he was going to do with the timber after he had made final proof?

A. No, sir.

Q. Or to whom he was to sell the timber?

A. No, sir.

Q. You never knew that at all?

A. I never inquired into it; it was none of my business.

Q. Acting on the instructions of your partner, did you let him have the money?

A. Yes, sir, I did.

Q. When you went out there with Smith with this

(Testimony of H. J. Faust.)

deed drawn up to Cobban to be executed, how long were you there?

A. I do not now remember; not very long.

Q. Was there any protest made on the part of Mr. Stewart against signing it?

A. Not that I can now remember.

Q. Did he appear to know that he was to deed to Cobban?

A. I could not tell you; I did not ask him.

Mr. MAYNARD.—I show the witness the record in this case, Volume VI, page 3296-97 of Stewart's testimony, and I also show the witness the signature of Alfred Stewart on page 3311 on which his signature appears, and the words "Subscribed and sworn to before me this 28th day of March, 1902, Henry N. Blake, Examiner."

Q. I ask you to read with me this testimony, commencing on page 3294.

"Q. Where did you go?

A. I went home with them.

Q. Oh, you went home with them?

A. Yes, sir.

Q. And then you signed the deed?

A. Yes, sir.

Q. Had your wife signed the deed before you got home? A. No, sir.

Q. Just where *were* you when they met you?

A. I was about probably a mile from home, north of where I live.

(Testimony of H. J. Faust.)

Q. What were you doing?

A. I was not doing anything?

Q. You were not doing anything?

A. No, sir, it was Sunday.

Q. Oh, it was Sunday? A. Yes, sir.

Q. Mr. Faust and Mr. Smith, Mr. Wallace D. Smith, it seems from the deed, drove up and met you in the field?

A. They met me off of my own place; it was about a mile north and west of my place, on section six, where they met me.

Q. What were you doing there?

A. Myself and my youngest boy went down to the creek, down to what we call Montour creek, and one of my neighbors came along and we were sitting there talking. We finally started home, and on the way home we met them ust a little piece after we met the neighbor, probably a quarter of a mile.

Q. What did they say to you when they met you there?

A. Why, they explained their business to me and we got into the buggy and rode back with them, or I did, rather.

Q. What business did they explain to you?

A. They explained to me as Mr. Faust said that he had sold the land, to sign the deed.

(By Mr. BICKFORD.)

Q. Did you mean the land or the timber?

A. The timber, rather.

(Testimony of H. J. Faust.)

(By Mr. MAYNARD.)

Q. And you did sign the deed? A. Yes, sir.

Q. And your wife? A. Yes, sir.

Q. Did they pay you any money?

A. No, sir, not that day they didn't.

Q. How soon after you signed and executed and delivered that deed did they pay you the money?

A. That I am not sure of really; they never paid me any cash, but I got a credit of $25 on my account, besides returning what I borrowed from Mr. Jakways and Faust.

Q. That is the $65 they had advanced to you for expenses, they wiped that out? A. Yes, sir.

Q. And you got a credit on your indebtedness at the store of how much? A. Twenty-five dollars.

Q. How do you know that?

A. How do I know that I got a credit on that?

Q. Yes.

A. Why, I had it marked on my account; it came to my notice that way.

Q. Twenty-five dollars? A. Yes, sir.

Q. That is what you got out of the transaction?

A. Yes, sir.

Q. When these people came up there and asked you to sign this deed, who did they say they sold it to?

A. Mr. Cobban.

Q. And that was the first time that you knew that the sale was to be made to Mr. Cobban?

(Testimony of H. J. Faust.)

A. Yes, sir, that is the first time I knew it was made to him or had any intimation of it.

Q. What?

A. That is the first I had any intimation of who they sold it to.

Q. And what did they inform you that they had sold?

A. Yes.

Q. What did they say that they had sold?

A. They said that they had sold the timber, handed me the deed to read, to see if it was all right, if I approved of it.

Q. When had you said anything to Jakways & Faust about retaining the land?

A. Why, that was when I spoke to Mr. Faust about selling the timber; I did not give him any authority to sell the land, only the timber.

Q. You did give him authority to sell the timber?

A. Yes, sir.

Q. For what purpose? A. For $500.

Q. Five hundred dollars? A. Yes, sir."

Q. Now, in the light of that testimony, Mr. Faust, do you now say that you never had any conversation with Mr. Stewart about selling that timber?

A. Well, he might possibly have asked me to sell the timber, but the negotiations were, you might say, in whole with our Mr. Jakways. So many little transactions of that nature appearing, that I would not be positive about it. Another thing I wish to explain that these parties seem to be in the habit of confusing the

(Testimony of H. J. Faust.)

names of myself and partner, and thereby refer, not only sometimes individually, but as a firm name to transactions that come and go through us.

Q. What have you to say as to whether or not Mr. Stewart had placed this matter in your hands individually to sell the timber for him?

A. It was not placed in my hands individually.

Q. Well, if it was not placed in your hands individually, was it placed, to your knowledge in the hands of the firm or in the hands of Mr. Jakways?

A. I presume he considered it placed in the hands of the firm after talking with Mr. Jakways and brought my name in for that reason.

Q. But he had had no talk with you personally?

A. I cannot now recall that he did.

Q. He says that he received a credit on your books for $25? Do you see any credit on the books for that amount?

A. Not on this book here, no, sir.

Q. Well, where would it appear?

A. If it appeared at all it would appear on his individual book, as I explained here the first forenoon I was on the stand.

Q. And if these items here refer to the land and you paid him $25 on it afterwards, that would not appear on this ledger? A. Not necessarily.

Q. Now, then, I call your attention to this Complainant's Exhibit No. 158, being the certified copy of

(Testimony of H. J. Faust.)

the deed between Oliver E. Muchmore and Elizabeth A. Muchmore and R. M. Cobban. I believe you stated this morning just before adjournment that you knew nothing about the purpose for which Mr. Muchmore took up his claim?

A. I don't remember that I knew anything about the purpose.

Q. How long have you known Oliver E. Muchmore?

A. I think for the last past seven or eight years.

Q. Does he frequently trade in your store?

A. Yes, sir.

Q. Do you remember where you took his acknowledgment? A. I think at our store.

Q. The same Mr. Smith that was in the Stewart case appears to be a witness? A. It seems so.

Q. Was this deed also prepared by Mr. Smith?

A. I could not tell you.

Q. What is your best recollection on the subject?

A. As near as I now recollect, Mr. Muchmore handed me the deed already executed, for me to acknowledge.

Q. Was Mr. Smith present?

A. Presumably, if he signed as a witness.

Q. The consideration of this deed is $1400?

Mr. WALSH.—Counsel seems to have an idea that you forged his signature.

The WITNESS.—Yes.

Q. Will you please state what you know about the facts and circumstances of this case?

(Testimony of H. J. Faust.)

A. What facts have you reference to?

Q. With reference to the facts and circumstances leading up to the conveyance of this land described in this exhibit to Mr. Cobban?

Mr. WALSH.—Objected to because he has already told that in detail.

A. I have already stated.

Mr. WALSH.—He told about Mr. Muchmore going to Bonner and waiting there for Mr. Vogel and not meeting him and going to Missoula and making this arrangement with Mr. Cobban and coming back to present him the deed and so on and so on.

Mr. MAYNARD.—Very well; that is so much gained.

Q. Did you have a talk with Mr. Muchmore at any time before this deed was executed in regard to taking up this land?

A. I don't remember; I presume that we talked about the fact that he had filed on it and intended to make final proof on it; that would be natural.

Q. Other than the fact that it would be natural, have you any present recollection of telling him that?

A. No, sir, I have not.

Q. Have you any recollection of any conversation that you had with him in regard to this land previous to the conveyance?

A. We might have talked about the land; I cannot now remember.

(Testimony of H. J. Faust.)

Q. Didn't he tell you for what purpose he was making the entry?

A. Not now that I can remember.

Q. Didn't you tell him what he could do with the land?

A. I cannot say that I can remember that I did.

Q. Well, I want your best recollection as to whatever took place between you and Mr. Muchmore previous to his executing the deed?

A. I have given you that to the best of my knowledge.

Q. Have you any recollection of advancing him any money for the purpose of paying for this land?

A. Yes, sir, I have a recollection of loaning him money for the purpose, as I understood, to make final proof on his own claim and that of his wife.

Q. Anybody else's? A. Not to him.

Q. How much money did you give him?

A. He borrowed at one time, $845.

Q. When was that?

A. Well, the record shows the date of August 30th, 1899.

Q. Where is that?

A. Page 384, at the top, in this ledger.

Q. That is August 30th, 1899, $845?

A. Yes, sir, at that time.

Q. When was it paid back?

A. He has a credit on November 30th, of $1,045.

(Testimony of H. J. Faust.)

Q. When did you know of the fact that he was going to sell to Mr. Cobban?

A. I do not know of any fact that he was going to sell to Mr. Cobban until the deed was executed before me.

Q. I notice that the credit on the books there show a net profit to himself and wife of $100 apiece? Did you ever have any conversation with Mr. Muehmore to the effect that, if he would sell that land to Cobban, that he could get an advance of $100 for each claim?

A. Answering the first part of your question, I wish to say that there was some cash paid besides what he wished to have to his credit—

Q. How much was that?

A. —of which there was no account taken, as before explained in my testimony in other cases. In answer to the second part—

Q. Just right here now—

Mr. WALSH.—Let him answer the question.

The EXAMINER.—Let him answer the question.

The WITNESS.—In answer to the second part of your question I wish to say that there was no understanding whatever as to what he was to receive, or any understanding that he was to sell or any contract made in any way, shape, form or manner.

Q. And you had never said anything to him about getting an advance of $100?

A. No, sir, not that I can now remember.

(Testimony of H. J. Faust.)

Q. Well, you would be likely to remember if you had said it, wouldn't you? A. Most assuredly.

Q. And you are prepared to say that nothing of the kind was ever said to him by you?

A. Yes, sir.

Q. How much money did you pay him besides what appears on the books?

A. I could not now remember; there were small sums at various times that he got, of which no entry was made.

Q. Do you know of his having had any conversation with your partner, Mr. Jakways, in regard to the selling of the land to Cobban or that, if he did sell it, he could get $100 profit?

A. I don't know of any such conversation.

Q. You never were informed?

A. Never was informed that there was, no, sir.

Q. I show you now volume II of the record in this case, page 864. I show you the signature of Mr. Muchmore on page 866, and the words: "Subscribed and sworn to before me this 19th day of December, 1901, Henry N. Blake, Examiner in Chancery." Please read with me.

"Redirect Examination.

(By Mr. MAYNARD.)

Q. Now, as I understand you in cross-examination, Mr. Muchmore, you say that so much of this affidavit when you made your filing, which reads: 'I do not apply

(Testimony of H. J. Faust.)

to purchase the land above-described for speculation,' is not true? A. Yes, sir.

Q. That as a matter of fact at that time, when you made that filing, you did make it for the purpose of speculation?

Mr. BICKFORD.—We object to that question as being leading.

A. I did.

Q. Solely for that purpose? A. Yes, sir.

Q. And the only purpose that you had in coming over here to Helena with your wife and making these filings and taking up these locations was for what money you could get out of the land in selling it after you had made your final proof? A. Yes, sir.

Q. Mr. Griswold, previous to your coming here, had told you that Mr. Cobban would pay you $100 over and above your expenses? A. No, sir.

Q. Well, who did tell you? A. Mr. Faust.

Q. Mr. Faust told you?

A. Yes, sir; that is what Mr. Griswold told him.

Q. And he told you what Mr. Griswold had told him?

A. Yes, sir.

Q. Mr. Faust is a member of the firm of Jakways & Faust? A. Yes, sir.

Q. And he gave you money to come over here and file and gave you money to pay your expenses?

A. He did.

(Testimony of H. J. Faust.)

Q. And also gave you the money to make your final proof, and gave you money to pay your expenses?

A. Yes, sir.

Q. And with this money that he had given you you made this payment? A. Yes, sir.

Q. And the money that he gave you to pay the expenses of filing? A. Yes, sir.

Q. And thereafter you conveyed the land to Mr. Cobban for that same amount, $100, besides your expenses? A. Yes, sir.

Q. Is that true? A. Yes, sir."

Q. Now, after having read that testimony, what have you to say as to whether or not you did, in conversation with Mr. Muchmore, inform him of the fact that this $100 was to be paid to him and his expenses for making this deed to Mr. Cobban?

A. Nothing further than as I stated before in my testimony.

Q. And when he says he received this $100 as his pay for doing this work, and which you informed him he would receive, what have you to say now about your having paid him other money?

Mr. WALSH.—Now, one moment. Don't answer that question. We object to that because there is no testimony of that kind. The witness has not testified anywhere that he received $100 over his expenses.

Mr. MAYNARD.—(Reading:) "And thereafter you

(Testimony of H. J. Faust.)

conveyed the land to Mr. Cobban for that same amount, $100, besides your expenses? A. Yes, sir."

(By Mr. MAYNARD.)

Q. Now, will you please answer the question.

Mr. WALSH.—No, don't answer it. The witness has positively denied that he made any such statement.

Mr. MAYNARD.—But this Mr. Muchmore says he did tell him that.

The EXAMINER.—The question involves an assumption. I will instruct the witness to answer the question in his own way.

A. As to what Mr. Muchmore could have received, certainly that is none of my business, and I don't know as I had any information as to what he expected to receive. I do know of paying him some other money besides the credit that was placed to his account.

Q. On account of this land deal?

A. On account of this land deal, yes, sir.

Q. But you don't know how much it was?

A. I could not recall the amount, no, sir.

Q. You deny the conversation that you had?

A. I don't remember of any conversation leading up to that subject, no, sir.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Faust, were you indicted by the Grand Jury in connection with these timber and stone entries?

(Testimony of H. J. Faust.)

A. No, sir.

Q. Have you employed any counsel in this matter?

A. No, sir.

Q. To whom did you refer when you were asked by Mr. Maynard as to whether you conferred with your counsel about bringing these books here?

A. Why I took it for granted that he meant the counsel for W. A. Clark.

Q. Did you confer with them about the books?

A. I might have, yes, sir.

Q. When they subpoenaed you, did they direct you to bring here the books showing these transactions?

A. I don't believe the subpoena called for the books if I remember right.

Q. You had talked with counsel, however, prior to that time, had you not? A. Yes, sir.

Q. And they had asked you to bring along with you any books showing these transactions, had they not?

A. Yes, sir.

Q. And when you arrived in the city, did they confer with you about your books? A. Yes, sir.

Q. And what, if anything, did counsel say to you then about the absence of the journal and cash-book?

A. They thought that for the satisfaction of Mr. Maynard I had better get them and produce them if possible.

Q. And accordingly you made the effort that you speak of? A. Yes, sir.

(Testimony of H. J. Faust.)

Q. Why was it that you brought the ledger and did not bring the cash-book and the journal, Mr. Faust?

A. Because I did not think they were needed at the time; I had no idea that they would be used.

Q. You brought with you what else besides this ledger?

A. The stubs of the checks covering the period in controversy.

Q. You have those there, have you?

A. Yes, sir.

Q. Has counsel questioned you about those?

A. No, sir.

Q. Now, in the ledger which you have produced, Mr. Faust, did you say that the last entry in this books takes it up to January 1st, 1900, or January 1st, 1901?

A. January 1st, 1901.

Q. You are quite sure, Mr. Faust, are you, that, after using these books for something over a year after these transactions took place, you did not discard them and adopt a new set of books for the purpose of covering up the evidence of these transactions?

A. Why, certainly not; we had no occasion to.

Q. What information, if any, did you have on the 1st of January or at or about the 1st of January, 1901, that these matters were to be made the subject of inquiry anywhere? A. No information whatever.

Q. When did you first learn that the validity of these transactions was in any way questioned, Mr. Faust?

A. In the fall, I believe, of 1901.

(Testimony of H. J. Faust.)

Q. Do you remember hearing about certain indictments returned by the Grand Jury?

A. Yes, I read, I think, in the daily papers something to that effect.

Q. And when with reference to the time that these indictments were returned did you learn that the validity of these transactions was in any way questioned?

A. Why, it was shortly afterwards; I don't recollect the date, but it seems to me it was in the fall of 1901. I know it was in the fall of 1901, but I do not now remember the month.

Q. Well, I ask you when it was with reference to the time that the indictments were returned. Had you known of it for some time previous to that, or was that the first you had heard of it?

A. That was the first knowledge I had of it as near as I can remember now.

Q. You didn't then purposely destroy this journal and ledger to cover up the facts of this matter, Mr. Faust?

A. No, sir. I do not know that they are destroyed in fact.

Q. What idea have you concerning the reason why your partner or clerk was unable to find the books that you asked for, Mr. Faust?

A. Well, I told him where all the books and papers were filed away, upstairs, above our store. I presumed at that time that the books in question were there also,

(Testimony of H. J. Faust.)

but filed together, or at least near by were catalogues and things that we had been in the habit of saving for reference, and a little over a year ago we made a clean-up and it might have been such a thing that those books had got mixed up with the papers and catalogues and were carried out and a bonfire made of them.

Q. At the present time have you any idea where the books would be other than the place at which you directed them to look for them?

A. They would be no other place as near as I now know.

Q. How long have you been doing business with the Western Montana National Bank?

A. I think since the spring of 1893.

Q. And what has been the character of the business that you did with them?

A. Placing money there on deposit to our credit subject to check and borrowing money from them and paying interest on overdrafts.

Q. You had an account there right along which you checked against?

A. Yes, sir, checked against our account.

Q. Now, touching these loans from Mr. Cobban and that sort of thing, I wish you would explain, Mr. Faust, how it was that during this time you happened to be having money placed to your credit by Mr. Cobban in the nature of loans to you from him?

A. Well, the first instance that I can remember was the case of the sale of the timber claims of Cora Y. Faust

(Testimony of H. J. Faust.)

and L. S. Jakways and Charlie Johnson, and also for the purchase afterwards of the timber that Mr. Doney had on his homestead. If I remember rightly, in order to negotiate with Mr. Doney for the timber on his homestead, we inquired whether Mr. Cobban would loan us some money for that purpose or for other purposes in case we needed it, which he consented to do.

Q. That is to say, that having asked you to negotiate with these parties for the property, he put this money on deposit to your credit at Missoula?

A. That is the way I now recollect it.

Q. And you checked against it, that went into your general account and you checked against it for general purposes.

A. For general purposes, yes, sir.

Q. And then when you made these purchases of them and it was necessary to pay, you paid for them by your own checks or otherwise? A. Yes, sir, entirely.

Q. And that is the significance of the account there with Mr. Cobban in the ledger, is it?

A. Yes, sir.

Q. Now, as I understand you with reference to some few, not all of these claims in controversy, the account does not show the entire amount with which the entrymen—the account on the credit side does not show the entire amount that was paid for the claim?

A. Yes, sir, I think that nearly all do, for the reason that we paid some cash, as before stated, of which we made no entry.

(Testimony of H. J. Faust.)

Q. And you put to the credit of the party such sum as he asked should be put to his credit, was that it?

A. Yes, sir, that was the idea.

Q. I shall call your attention to the account of Guy Muchmore at page 244; the debit side shows how much money loaned to Mr. Muchmore?

A. Four hundred and sixty dollars.

Q. And with what amount is he credited on account of the land? A. Four hundred and sixty dollars.

Q. Do you remember that Mr Muchmore sold his land for just exactly what it cost him?

A. I don't remember that he did.

Q. And what have you to say as to any money having been paid to Mr. Muchmore in addition to the $460?

A. He was paid in cash whatever over and above the amount that he wished to have placed to his credit, of which no record was made.

Q. Now, the counsel question you about these immense sums of money that you handled for Mr. Cobban. In addition to the ten entries that you have been particularly questioned about, those of Elijah W. White, Charlotte S. White, Edward Doney, Albert Muchmore, Guy Muchmore, Oliver Muchmore, Elizabeth Muchmore, Alfred Stewart, and Nels Opsata, I wish you would tell me what claims in addition to those ten you were concerned in the transfer of, Mr. Faust?

A. There was also Cora Y. Faust, Lewis S. Jakways and Charles Johnson. Did you have May Hawthorne, too?

(Testimony of H. J. Faust.)

Q. Yes.

A. May Hawthorne. I don't remember now any more now, but it seems to me that there was H. C. McNally also.

Q. Is that all you can think of?

A. That is all I can think of at the present time.

Q. And the aggregate of the moneys that you handled in connection with those entries constitute the immense sums of money that you were questioned about, do they?

Mr. MAYNARD.—Objected to as leading and not proper redirect examination, for the witness has already stated the various ways in which he obtained money from Cobban and the various purposes for which he was to use it, and I object to now, in the form of redirect examination, brother Walsh spelling Mr. Maynard in testifying in this case.

Q. Answer the question.

A. To my idea I would not consider it an immense amount of money.

Q. Now, Mr. Faust, what recollection, if any, have you concerning the payment by you of any sum of money out of that coming to Mr. Doney to Mr. Dixon or his order?

A. I paid some money on an order to Mr. Dixon; of course, I cannot now remember the sum.

Q. On the order of Mr. Doney?

A. But I also paid through Mr. Doney's verbal order

(Testimony of H. J. Faust.)

several sums of money for purchases that he made outside of our store.

Q. Do you remember the character of any of those purchases or the subject matter of them?

A. Well, there was the leasing of a certain piece of property, one instance, and buying some machinery in another instance; it seems to me several—I could not say exactly now—but certainly more than I can now recall, very promptly at least.

Q. Now, you were questioned by counsel concerning the entry appearing in Mr. Doney's account, showing a loan of $50 to him on May 26th, 1899, and you were asked whether that was not loaned him for the purpose of going to Helena with which to file upon his claim. Do you remember what you said in answer to that; have you a recollection about that?

A. My recollection is that I answered that I do not think I questioned Mr. Doney about what purpose he was borrowing that money for.

Q. Now, you appear on the 31st of August to have loaned him the sum of $21.25, or at least he got that amount in cash. Are you able to say that that was loaned him for the purpose of going to Helena with which to file upon his land?

A. No, sir, I could not say; it might have been.

Q. When you spoke of the aggregate amount received by Mr. Doney as being $2,400 or $2,500, what are the claims of which that aggregate sum constituted the purchase price?

(Testimony of H. J. Faust.)

A. Why, I understood it included the timber on his homestead also that of his own timber claim and that of his wife, Martha M. J. Doney.

Q. Have you any recollection of conducting any negotiations with Mr. Doney, in the course of which a separate price was fixed upon the timber claims and another separate price was fixed upon the homestead claim?

A. I think there was, although I could not exactly recall the details.

Q. Are you able to say now what the distribution was and as to how much of the $2,400 or $2,500 was appropriated as the purchase price of the three several claims?

A. Well, I could not exactly say, but it would seem to me that Mrs. Doney got her money and Mr. Doney got what money he wished.

Q. What I want to know was if you can now recall the specific amount which was considered in the negotiations as paying for each specific claim?

A. No, sir, I could not from memory.

Q. Did you say, Mr. Faust, that Mr. Smith had brought from Missoula with him the deed to the Stewart claim? A. I understood that he had.

Q. Do you remember when he came there?

A. I couldn't remember the day of the week.

Q. Nor with reference to the time that Mr. Stewart had made proof? A. No, sir.

Q. Now, you were asked as to where Mr. Cobban got

(Testimony of H. J. Faust.)

the data with which to make up this deed of Stewart's in Missoula; had you any information about that?

A. No, sir.

Q. I suppose Mr. Stewart's final proof was advertised just the same as anybody else's final proof?

A. Yes, sir, he could easily get it in the papers where it was advertised, if he had cared to.

Mr. MAYNARD.—I desire to interpose an objection to the constant leading questions that are put by counsel so manifestly leading, so manifestly improper that if seems as if counsel would of his own accord refrain from such a wilfull violation of the method of conducting legitimate examinations. I hate to continually interpose objections.

Q. Now, Mr. Faust, I wish you would state what the fact is about your having told Mr. Oliver E. Muchmore that Mr. Griswold had said to you that Mr. Cobban would pay his expenses or the expenses of any entryman in making an entry under the Stone and Timber Act and $100.00 besides.

Mr. MAYNARD.—I object to that question because it has been fully inquired into, and he has denied positively any such conversation.

A. I don't remember now of any such conversation.

Q. What have you to say as to whether it took place or not?

Mr. MAYNARD.—Objected to because he has already

(Testimony of H. J. Faust.)

answered it and answered it in the very last answer that he made.

A. I would have to say that it did not take place to the best of my knowledge.

Q. You told counsel that you had known Mr. Griswold for some seven or eight years. Where did he live during the time that you knew him, Mr. Faust?

A. When I first met Mr. Griswold he came in there, I think, about the year 1893 or 1894 with one Mr. Millard from Wisconsin, looking after timber deals.

Q. The question is where did he live during the time that you knew him?

A. After that he informed me that he lived in Helena for some time prior to his moving on to the Clearwater, where he kept a road house for a few years; then afterwards he moved to Missoula.

Q. Did you know his general reputation in the community in which he lived about Clearwater?

A. I did about Clearwater; yes, sir.

Q. What is his general reputation for truth, honesty and integrity in that community?

A. In that section of the country it is not good.

Q. You were also asked by counsel concerning one L. A. Wells, who lives in your neighborhood, I believe.

Mr. MAYNARD.—I never referred to Mr. Wells at all, not one single question. I object to an assumption of that kind. I had no occasion to refer to Mr. Wells.

A. I know one L. A. Wells; yes, sir.

(Testimony of H. J. Faust.)

Q. How long have you known him?

A. Ever since I moved into the Big Blackfoot Valley.

Q. Do you know his general reputation in that neighborhood for truth and veracity? A. Yes, sir.

Q. What is it? A. It is not considered good.

Recross-examination.

(By Mr. MAYNARD.)

Q. Did you know Mr. Griswold previous to his moving up on the Clearwater? A. Yes, sir.

Q. Where?

A. He was there in the Big Blackfoot Valley several months, I think in the year 1893 or 1894, and I afterwards saw him in Helena on different occasions between that time and the time that he moved to the Clearwater country.

Q. Besides this few months that you knew him in 1893 and the chance meetings in Helena, some hundred miles away from your town, isn't it, and more, too?

A. Yes; I guess it is a hundred miles.

Q. Did you have any acquaintance with Mr. Griswold other than that which you formed while he had a hotel up at Clearwater? A. No, sir.

Q. How far was he living away from you at that time?

A. At Clearwater?

Q. Yes.

A. I think the distance is considered to be about 16 miles.

Q. How long did he live there?

(Testimony of H. J. Faust.)

A. I don't remember the exact number of years; he lived there quite a while, two or three years.

Q. So that your acquaintance was confined to two or three years when he was living 16 miles away from you, with the exception that you have named already?

A. Yes, sir.

Q. Did you ever hear while he was living at Clearwater of his having any trouble with anybody?

A. People did not seem to have confidence in him as regards his truth and veracity.

Q. You never knew of his being arrested for anything, did you? A. No, sir.

Q. Did he ever have any trouble with you personally? A. No, sir.

Q. Do you know of any specific instance of any kind coming to your knowledge reflecting upon Mr. Griswold's character?

A. I cannot now say as far as I am personally concerned.

Q. Did you have any knowledge at all on the subject except this statement that you have made to your counsel?

A. General hearsay.

Q. Your counsel asked you if you were arrested for subornation of perjury? A. Yes, sir.

Q. You said no? A. I answered no.

Q. You never were arrested, were you?

A. No, sir; never in my life.

Q. You never had any trouble down at Drummond in the railroad matter when you left?

(Testimony of H. J. Faust.)

A. I was subpoenaed once as a witness.

Q. In what case?

A. It was a case of one man supposed to have been attempting to hold up another as near as I can remember now.

Q. Who was the man that was charged?

A. I don't remember any names; they were strangers to me, all of them.

Q. You were associated in business down there with your partner, Jakways, weren't you? A. No, sir.

Q. You knew of the trouble that Jakways had with the railroad company?

A. I never knew that he had any trouble whatever.

Q. You never heard of it? A. No, sir.

Q. Never heard of his having been arrested?

A. I never heard that he was ever arrested.

Q. Nor being held up, charged with a shortage there?

A. No, sir; there was never any charge against him to my knowledge.

HENRY J. FAUST.

Subscribed and sworn to before me this 3d day of May, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Tuesday, May 6th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

J. H. T. RYMAN, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Ryman, where do you live?

A. I live in Missoula.

Q. How old are you? A. Forty-six.

Q. What is your present business?

A. Cashier of the Western Montana National Bank.

Q. How long have you been cashier of the Western Montana National Bank?

A. Two and a half years.

Q. Were you such cashier during the year 1899?

A. Not in 1899; I became cashier in 1900.

Q. What connection, if any, did you have with the bank in the year 1899?

A. I was vice-president of the bank prior to that time.

Q. As cashier of the bank have you the custody of its books and papers? A. Yes, sir.

Q. I wish you would tell us whether you examined the books of the Western Montana National Bank for the purpose of ascertaining when, if at all, any account was opened between that bank and L. A. Wells and Lizzie A. Wells or both of them?

A. You asked me when I did it?

Q. I ask you if you did?

(Testimony of J. H. T. Ryman.)

A. Yes, sir; I did.

Q. What have you to say as to when, if at all, any account was opened between the Western Montana National Bank and L. A. Wells or Lizzie A. Wells, or both of them?

A. I find on examination of our books that L. A. Wells and his wife opened a joint account in the name of L. A. Wells on January 2d, 1900.

Q. What have you to say as to any account subsisting between your bank and either of these people or both of them at any time prior to January 2d, 1900?

A. I find no account of any kind prior to that time.

Q. If there were an account there would you be able to find the record? A. Yes, sir.

Cross-examination.

(By Mr. MAYNARD.)

Q. When was the account closed?

A. It was closed November 15th, 1900.

Q. Have you got that account with you?

A. I have a copy of the account.

Q. Where is it?

A. I have it here. (Copy produced.)

Mr. MAYNARD.—I would like to have this marked for identification. I offer the same in evidence and ask that the same be marked as one of the complainant's exhibits.

(Account marked Complainant's Exhibit No. 313.)

(Witness excused.)

(Testimony of Henry C. Stiff.)

Mr. MAYNARD.—We will waive the signing of the testimony.

The WITNESS.—I cannot get away until to-night.

J. H. T. RYMAN.

Subscribed and sworn to before me this 6th day of May, 1902.

_____,

Standing Master in Chancery and Examiner.

I do hereby certify that the testimony of the above-named witness, J. H. T. Ryman, has been correctly transcribed.

HENRY N. BLAKE,
Examiner.

HENRY C. STIFF, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Stiff, where do you reside?

A. In Missoula.

Q. What is your business? A. Lawyer.

Q. What is the name of your firm?

A. Marshall & Stiff.

Q. The other member is Colonel Thomas C. Marshall?

A. Yes, sir.

Q. Were you associated in business with Mr. Marshall during the year 1899? A. I was.

Q. Do you know one L. A. Wells, who lives up the Big Blackfoot, Mr. Stiff?

(Testimony of Henry C. Stiff.)

A. Yes, sir; I know him slightly.

Q. How long have you known him?

A. Well, I should say that my acquaintance with him extends back about four years or possibly five years, just simply to know him when I see him, no intimate acquaintance.

Q. Do you remember having had any business transaction with him at any time during the summer of the year 1899? A. Yes, sir.

Q. I wish you would state what that was, Mr. Stiff?

A. Well, on one occasion there was advanced to him some money to prove up on a claim that he had made entry on, by the Big Blackfoot Milling Company. We represent the Big Blackfoot Company as attorneys, and there was a mortgage executed by him to secure the payment of the money that was loaned to him by the company. That was one transaction.

Q. And the other, Mr. Stiff?

A. Well, there was one later than that, as I now recall it, in which he and his wife were joint participants on the one hand, and they obtained money from the Blackfoot Company for a similar purpose.

Q. Now, what representations were made at the time that the money was obtained by Mr. Wells as to the purpose for which he desired to use the money?

Mr. MAYNARD.—Objected to as immaterial and irrelevant and for the reason that the same is hearsay.

A. The representation made by him was that the money which he was securing from the Big Blackfoot

(Testimony of Henry C. Stiff.)

Milling Company through our office, was to pay to the Government the amount necessary to be paid at the time that he proved up on a claim which he had taken up of Government land.

Q. And what was the character of the claim; under what Act was he about to take the claim up, if you know?

A. Well, I could only give my best recollection or impression at that time; to say positively as to the character of the claim I could not do it.

Q. What was it?

Mr. MAYNARD.—I object to the question being answered on the ground that it is apparent that the witness has no such knowledge at the present time as makes it competent for him to testify at all on the subject.

Q. What is your recollection as to the nature of it?

A. My recollection is that it was a timber and stone entry, as commonly designated.

Q. Now, later on, when the money was advanced, the second time, what, if any, representations were made as to the nature of the entry that was then about to be made?

Mr. MAYNARD.—I object to the question on the ground that it is leading.

A. I don't remember what representations were made as to the character of the claim. Perhaps that answers your question.

Q. Yes. Now, Mr. Stiff, for whom were you acting at that time?

(Testimony of Henry C. Stiff.)

A. For the Big Blackfoot Milling Company.

Q. And how did you come to advance the money to these parties for the purpose of making final proof for the Big Blackfoot Milling Company?

A. Well, we had instructions from Mr. Vogel, who is the Timber Inspector of the company.

Q. To do so, to advance it? A. Yes, sir.

Q. Now, what security, if any, did you take at the time, Mr. Stiff?

A. A mortgage upon the land that proof was about to be made upon.

Q. I now show you these two mortgages, which I ask the Examiner to mark—

(Mortgages marked Defendant's Exhibits Nos. 314 and 315.)

Q. Referring to exhibits 314 and 315 for the defendant, I wish you would state what they are, Mr. Stiff.

A. Well, 314 is a mortgage executed by Lizzie A. Wells and her husband, Lewis A. Wells, to the Big Blackfoot Milling Company, securing the payment of the sum of $450, at that time loaned by the Big Blackfoot Milling Company to them, or more particularly perhaps to Mrs. Wells, as it was represented at that time that it was to be used in proving up on her claim.

Q. And the other?

A. 315 is a mortgage executed by Lewis A. Wells and wife to the Big Blackfoot Milling Company, securing the payment of the sum of $450, which it was rep-

(Testimony of Henry C. Stiff.)

resented at that time was to be used by Mr. Wells in proving up upon a claim which he then had.

Q. By Mr. Wells? A. By Mr. Wells.

Q. What, if any, connection have these instruments with the mortgages referred to in the former testimony?

A. These are the same.

Q. Mr. Stiff, do you remember the pendency of an action in the District Court for Missoula County, brought by one Chauncey L. Griswold against R. M. Cobban, some time about the 1st of January or February of the year 1901? A. Yes, sir, I know of the case.

Q. When did you first learn of the pendency of the action or of the purpose to commence it, Mr. Stiff?

A. Well, I could not state the exact time; I think, however, it must have been in either January or February, 1901; I don't know whether the action at that time had been brought or not.

Q. And how, if at all, was the matter then brought to your attention?

A. Well, I possibly had heard in a general way that either the action had been brought or that it was likely to be brought, but the most definite information I had with reference to the matter was upon an occasion when Mr. Draffen of the law firm of Duncan & Draffen of Missoula, came into our office, and there was some conversation took there with reference to the controversy between Mr. Griswold and Mr. Cobban.

Q. Between whom was that conversation, Mr. Stiff?

A. Well, I think it would be correct to say that the

(Testimony of Henry C. Stiff.)

conversation was principally, if not entirely, between Mr. Draffen and Colonel Marshall. I was present. The conversation began, seemingly, by Mr. Draffen's directing his conversation more to Colonel Marshall than to me, though we were both sitting there.

Q. Go on and tell what was said.

A. Well, I would not undertake to relate the exact language employed; I could state the substance of what was said.

Q. That is what I desire.

A. Well, Mr. Draffen began by a statement of the fact that there was a controversy between Mr. Griswold and Mr. Cobban, that Mr. Griswold claimed that Mr. Cobban was indebted to him in a sum which he named, and my recollection is it was $3500; something like that, a sum approximate to that, at all events, and he expressed his belief that the demand was a just one, and proceeded to tell what he proposed doing in order to secure the allowance of Mr. Griswold's demand. He said in that connection that he was a particular friend, an old schoolmate of Mr. Zevely, a special agent of the Interior Department, and that he intended writing to him and informing him that there had been a great many unlawful entries under the Timber and Stone Act made, and stated furthermore that Mr. Cobban was connected with the matter and Mr. Griswold represented him, and it was by reason of the relations that existed between them that this controversy arose, and that he was going to employ that method, for the purpose of forcing

(Testimony of Henry C. Stiff.)

Mr. Cobban to accede to the demand made by Griswold for the amount that he claimed, and then he propounded, as I took it more to Colonel Marshall than to me, what his opinion was about a thing of that kind, and Colonel Marshall was quite emphatic as to what he thought about it, and they got into quite an argument then, and from that time on it was perhaps more of an argument, Mr. Draffen seeking to justify and defend the position that he had declared he had taken in the matter, and Colonel Marshall pointing out where he thought it was not the proper thing, rather than the narration of any facts connected with the case.

Q. What did Colonel Marshall say in regard to the course that he proposed to pursue?

A. He said that he regarded the conduct which Mr. Draffen indicated he was going to pursue as very reprehensible, and that was followed, if not immediately, at some time during the conversation there with a much stronger statement, that he considered it as unprofessional, and finally he went to the extent of saying that he thought that a man who would do that ought to be disbarred—that is, that a lawyer who would do that ought to be disbarred.

Q. What relation, if any, did Draffen say this man Zevely, stood to the Government of the United States?

A. Well, he mentioned the fact that he was a special agent of the Interior Department. I am not so sure, but he perhaps made it at the same time a little different from that, that is, that he was a personal representative

(Testimony of Henry C. Stiff.)

of the Secretary of the Interior. I knew and Colonel Marshall knew what Mr. Zevely's position was, and we were both acquainted with him, and when he began to talk about Mr. Zevely we knew who he was and the position that he occupied. For myself, I may not have known the exact proper characterization of his position, but I knew he was connected with the Interior Department from a conversation I had had with Mr. Zevely himself.

Q. Were you present at the time that the action to which you have referred was finally adjusted and settled?

A. Yes, sir, when the arrangement was perfected that was immediately followed by the dismissal of the action in court.

Q. I show you defendant's Exhibit "E," Mr. Stiff, and ask you remember seeing it on the occasion that you speak of?

A. Yes, sir, I recognize that as an affidavit which I saw on that occasion.

Q. And it appears from the paper itself to have been sworn to before you. Have you any independent recollection of that fact, Mr. Stiff?

A. Yes, sir, I remember the circumstance.

Q. Now, I wish you would state, Mr. Stiff, what you know about Mr. Griswold's having read this instrument before it was signed by him?

A. Well, I did not hear him read it aloud; I saw it in his possession and he was holding it and went through

(Testimony of Henry C. Stiff.)

it just as a person who was reading it in my presence there on that occasion.

Q. And what, if any, conversation was had between you and him at the time that he was sworn to the affidavit, if he was sworn?

A. Well, he was sworn, yes, sir, and before administering to him the formal oath, after there had been something to indicate that he was ready to swear to it, I propounded to him the question if he knew and was satisfied with the contents of that and desired to swear to it, and to that he answered yes, and immediately following that, I administered to him the formal oath.

Q. Do you remember any conversation had with reference to the truthfulness of the allegations made in the affidavit, outside of the former conversation between you and Mr. Griswold at the time of administering the oath?

A. Well, immediately following the occasion when I say that he looked over it as if he were reading it, why he announced that that was the truth, and it was from that that it was manifest that he was ready to sign and swear to it.

Q. What, if any, force or compulsion was exerted upon Mr. Griswold at that time for the purpose of procuring him to execute this instrument?

Mr. MAYNARD.—Objected to as leading, and calling for an opinion and therefore incompetent.

A. Well, there was not any that I observed; I don't know of any; I saw no indication of any.

(Testimony of Henry C. Stiff.)

Q. What have you to say as to his being detained in your office by locking the door or otherwise with a view to force him to sign this affidavit?

Mr. MAYNARD.—The same objection, and also leading. The only competent way would be simply to ask the witness what took place.

A. There was not anything of that kind; there was no detention of Mr. Griswold. The conference which culminated in a settlement began in our office during the forenoon. The matter had not been settled up to the lunch hour, and we separated and met there in the afternoon, perhaps at half past one or two o'clock, somewhere about there. Now, there was no detention of Mr. Griswold against his will. I believe that one of the doors to the office was locked for the purpose of preventing interruption from anyone who might come from the outside while we were engaged in the transaction of this business.

Q. What obstacle, if any, existed at that time preventing Mr. Griswold from leaving the room if he so desired? A. There was not any at all.

Q. Mr. Stiff, do you know one Mel. Stairs who lives in Missoula?

A. Yes, I know him by sight and have heard of him.

Q. Do you know what reputation he bears in the community in which he lives for truth, honesty and integrity?

A. Well, I do not think I could say that I do. Of course, I know of him in a general way.

(Testimony of Henry C. Stiff.)

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Stiff, while you were a member of the firm of Marshall & Stiff, you had but very little to do with the active management of the case of Griswold against Cobban, did you not?

A. Well, I possibly did not have as much to do with it as Colonel Marshall. He was the senior member of the firm, and perhaps was more active, but I was present I think, during the trial of the case before the Referee and I think during the whole time, though I am not sure.

Q. Mr. Howell and Mr. Hershey were the original attorneys in the case, were they not?

A. Yes, they entered the appearance for the defendant.

Q. The defendant, Cobban?

A. Yes, sir. We were subsequently employed in the case.

Q. In conjunction with Mr. Howell?

A. Well, I do not think that Mr. Howell retired from the case.

Q. Don't you know that he was actively engaged in the conduct of the case until its conclusion?

A. Well, perhaps to the same extent that I was; I don't know that he was any more so; that is, of course, he may have been more energetic and put forth more effort in possibly ascertaining what facts were to be presented, but as far as being present at the hearing

(Testimony of Henry C. Stiff.)

before the Referee, why, it was about the same between Mr. Howell and myself as far as I am able to judge.

Q. Do I understand you, then, that there were three of you that appeared for Mr. Cobban at the time of the hearing and were actually in attendance before the referee?

A. Yes, sir, Mr. Howell was there part of the time. I would not say that he was there all of the time, and of course, we conferred with him and consulted with him.

Q. And Colonel Marshall and yourself?

A. Yes, sir.

Q. The affidavit that my brother Walsh called your attention to, that is in the handwriting of Mr. Howell,, is it not; just look at it please?

A. Well, I don't think that I know Mr. Howell's handwriting; I don't think I am sufficiently familiar with it. I have doubtless seen him write, and he was in Missoula awhile engaged in practice, and I have doubtless seen his name signed to papers, but I would not undertake to say that that is Mr. Howell's handwriting.

Q. Do you know Colonel Marshall's handwriting?

A. Yes, sir.

Q. Was that written by Colonel Marshall?

A. No, it was not.

Q. Was it written by yourself? A. No.

Q. By Mr. Hershey? A. No.

Q. Was it written by Mr. Cobban?

(Testimony of Henry C. Stiff.)

A. I don't think it is Mr. Cobban's handwriting. I have seen Mr. Cobban's handwriting and I am quite positive that it is not his.

Q. You don't know of anybody who could have written it, having taken out the persons I have named, except Mr. Howell, do you?

A. Well, he might.

Q. That was associated with the case, I mean.

A. I don't know.

Q. You know Mr. Draffen's handwriting?

A. Yes, I think I do.

Q. Is that his handwriting?

A. I don't think it is.

Q. Or Mr. Duncan's?

A. I don't think it is Mr. Duncan's.

Q. Did you see the first proposed affidavit?

A. Yes, sir.

Q. Was that submitted to you for examination?

A. I think it was gone over in my presence; I think read, perhaps.

Q. Who were present?

A. Well, there was Mr. Cobban, Mr. Griswold, Mr. Duncan, Mr. Draffen, Mr. Howell, Colonel Marshall and myself as I now recall; I don't think there was anyone there whom I have not named, and I think those whom I have named were all there.

Q. Do you know where that paper writing is now?

A. I do not.

(Testimony of Henry C. Stiff.)

Q. Where was it when you last saw it?

A. Well, the last recollection I have of seeing it was at the time we dispersed at the time I spoke of a while ago at the lunch hour on that day when the settlement was perfected as to whose immediate possession, that is as to whose hands it was in I could not say; I don't know.

Q. Do you know whose work that was?

A. I do not.

Q. Who got it up? A. No.

Q. Who wrote it? A. I don't know.

Q. Wasn't it in the same handwriting as the one that is before you?

A. I don't think so. My impression is—I won't state it as a positive fact, but as my best recollection I will state that that was typewritten; I may be mistaken about that; I only give my best impression.

Q. If typewritten, do you know where it was written? A. I do not.

Q. And you do not know its author? A. No.

Q. And all that you do know about it was that it was submitted at the time of this conference?

A. That was the first I knew of its existence.

Q. The first that you knew that such a paper was to be presented to Mr. Griswold?

A. I think it was the first I knew, yes, that such a paper was to be presented to Mr. Griswold.

Q. That was not signed, was it?

(Testimony of Henry C. Stiff.)

A. It was not signed to my knowledge in my presence.

Q. Don't you know of the fact that Mr. Griswold refused to sign it, and Mr. Draffen refused to submit any such document to Mr. Griswold, and didn't he say so in your presence and hearing?

A. I don't recollect, Mr. Maynard, that he said what you have indicated.

Q. Or in substance?

A. Well, he did not sign it in my presence, and I think they left there undetermined as far as I was able to ascertain whether he would sign it or not.

Q. Did you see it afterwards?

A. I don't think, I ever did; I never did that I have any recollection of.

Q. Then, as I understand you when they separated before luncheon on the day of the conference looking to the settlement—

A. That is the time that I have reference to.

Q. And you saw it in the morning and never saw it again.

A. In the forenoon, yes, up to the time we separated, which was about the noon hour; I don't think I ever saw it any more.

Q. Then, after assembling again in the afternoon, the paper which is in evidence in this case and which you have before you was signed by Mr. Griswold and sworn to by him? A. That is correct.

(Testimony of Henry C. Stiff.)

Q. And the case of Griswold against Cobban was shortly thereafter dismissed?

A. That same afternoon, I think or possibly it was not dismissed—the Court may not have been in session. I think the announcement was made to the referee that there would be no occasion to proceed further in the case, and that afternoon or the next day, very shortly at all events, the motion was made in court and the case dismissed.

Q. Mr. Stiff, when was the last proceeding had before the referee previous to this conference that you have spoken of?

A. I think it was the taking of the testimony of Mr. Pound at his residence up the Rattlesnake that morning.

Q. Who attended at that time?

A. Well, Mr. Murray, the referee, Mr. Griswold, Mr. Cobban, the parties to the suit, Mr. Draffen representing Mr. Griswold and I am not sure whether Mr. Duncan was or not and Mr. Howell and myself; there might possibly have been others, I don't recall to mind at this time any others, though.

Q. How far was Major Pound's residence from your office?

A. A mile, perhaps, I should estimate the distance, up the Rattlesnake on the west side.

Q. Is he living there now?

A. Well, I think he is, I don't know; I think he is

(Testimony of Henry C. Stiff.)

living in Missoula still. I saw him there yesterday before leaving for Butte.

Q. And his testimony was taken at that time and place?

A. It was. Allow me to add that Mr. Glenny, who is a stenographer, was present of course, at the taking of his testimony.

Q. Had testimony been taken the day before?

A. You mean had Mr. Pound's testimony been taken or any testimony?

Q. Any testimony?

A. Why, if there was a hearing at all I am not sure whether there was any days intervening between the taking of previous testimony and that which was taken of Mr. Pound or not, but I think we were engaged in taking testimony the day before and it was arranged about adjourning time that we would go up to Mr. Pound's house next morning and take his testimony because of the fact that he was suffering from rheumatism and was unable to leave his bed.

Q. And then proceeded with the taking of testimony at the office of the referee on returning from Major Pound's home?

A. Well, I don't know whether there was any arrangement for taking testimony beyond the taking of the testimony of Mr. Pound or not; we had been conducting the hearing in the district courtroom.

Q. Well, wherever it was?

A. Yes, but I don't remember now as to what the

(Testimony of Henry C. Stiff.)

arrangement was as to when we would resume the hearing after taking Mr. Pound's testimony; we all came back together, and it was not yet noon but we did not go to the courtroom direct; at any rate I did not, and I don't think any of the party did.

Q. What caused this sudden stopping of the taking of testimony and the commencement of the negotiations for a settlement?

A. Well, I think the commencement of the negotiations for a settlement was what stopped the taking of testimony.

Q. How did that start?

A. Well, there had been some suggestion for a day or two before by a Mr. Sparks, who claimed to be on terms of friendship with both parties to the controversy; I think that he had opened negotiations; there was something said by him to one side or the other, and that was communicated to them, and I think through him, and finally it developed into a negotiation for a settlement and finally resulted in a settlement.

Q. Who is this Mr. Sparks?

A. Why, I think his position is known as that of timber inspector or estimator for the Western Lumber Company.

Q. Has he that position now?

A. Well, I am not prepared to say. I see him occasionally about Missoula, but have not kept myself

(Testimony of Henry C. Stiff.)

advised as to whether he is still in their employ or not.

Q. What was he doing at that time?

A. I think he was then in the employ of the Western Lumber Company. He had made the estimates on several of the tracts of land as I understood, from the trial of the case about which there was a controversy.

Q. For the Western Lumber Company?

A. No, he had made the estimate, it appeared, of the amount of timber on the claims made by several of these parties who afterwards proved up.

Q. You mean on the part of entrymen on the claims—

A. I am not prepared to say; I don't think Mr. Sparks testified at all, consequently I only know by the pieces of information I have—

Q. If he made the estimates of this timber on the lands that were afterwards proved up on by these entrymen and entrywomen, in whose employ was he at the time?

A. I don't know; that is, as far as knowing is concerned. As I stated, it was my information that he was at that time in the employ of the Western Lumber Company.

Q. You knew of the fact that he had been, previous to that time, in the employ of Mr. Cobban, did you not?

A. I don't know that he was ever in the employ of Mr. Cobban.

Q. You have no knowiedge as to that fact one way or the other?

(Testimony of Henry C. Stiff.)

A. No, I don't think I ever heard of his being in Mr. Cobban's employ.

Q. Do you remember who first suggested to you personally the propriety of settling the action?

A. I don't know, Mr. Maynard, as anybody ever suggested to me the propriety of it. If what you wish to ascertain is the time when I first obtained information concerning or looking to a settlement, I think it was from Colonel Marshall during the progress of the hearing before the referee in the courtroom.

Q. Was that the day before this taking of the testimony of Mr. Pound?

A. It was on some day before; it was not that day that it was settled; it was on some day previous to that; whether it was the first day previous I am not prepared to say.

Q. Do you know how it happened that during the taking of the testimony before the referee at such a time and place your partner suggested to you the question of settling the case?

A. Why, I think he communicated the fact to me as a bit of information connected with the case.

Q. What was the bit of information?

A. That there had been a suggestion of settlement, and I learned from him that the suggestion came from this man, Sparks.

Q. When?

A. At the time I speak of, when he communicated to me in the courtroom.

(Testimony of Henry C. Stiff.)

Q. How long before the communication to you from your partner had Sparks communicated to Marshall?

A. I don't recollect; I don't know that Sparks communicated to Marshall direct, but the information seems to have reached Marshall before it did me, and it was through him that I obtained it. I don't know how long it was in coming from Sparks to me.

Q. And just how it happened that Sparks seemed to be moving in this matter you don't know?

A. Well, as I stated a while ago, I understood at the time that he had expressed himself as feeling friendly to both parties in the controversy and further expressed a desire to see the controversy settled without going any further.

Q. This was in June, 1899, was it not?

A. No.

Q. That the taking of this testimony before the referee— A. No, sir.

Q. When was it, 1900? A. 1901.

Q. 1901, yes; I misspoke myself.

A. Either in May or June, I am not positive as to the month.

Q. Well, it has been fixed as a fact in the case that it was in June?

A. Well, if it is a fact, then, that is when it occurred.

Q. And the case had been pending since the preceding month of January?

(Testimony of Henry C. Stiff.)

A. The action was instituted in the month of January; there had been, of course, some time consumed in the settlement of the pleadings in the case; I think before we went into the case or perhaps at the time we went in there was pending a motion of some kind to make the complaint more specific, perhaps, and in the regular course of a lawsuit the pleadings were settled and the case was heard.

Q. You have no knowledge of any kind, have you, Mr. Stiff, about any proposition having been made by the plaintiff, Griswold, or his attorneys, Messrs. Duncan & Draffen, looking to a settlement at any time from the time the suit was started by the filing of the complaint up to this date in June that you have referred to?

A. No, I don't recall anything in that regard now.

Q. The case had gone to issue and had gone to trial and plaintiff had rested his case and the defendant had been sworn himself and while you were in the very act of taking additional testimony on behalf of the defense, this suggestion for a settlement was made?

A. Yes, the defendant had been sworn and had given his testimony and some other witnesses in behalf of the defendant had testified, and then the suggestion of settlement was made. The suggestion, however, did not come from the side of the defendant.

Q. You said a few moments ago that Mr. Sparks made the suggestion on the ground that he was a friend to both parties?

(Testimony of Henry C. Stiff.)

A. Yes, sir, that is right.

Q. And that it came from him?

A. Yes, sir, that was my information I said.

Q. Now, then, how do you say that it did not come from the defendant?

A. Because I did not consider Mr. Sparks as being on the side of the defendant.

Q. How do you know but what Mr. Sparks had been engaged by Mr. Cobban for the very purpose of sounding Mr. Griswold to see if a settlement could not be effected?

A. Well, I will say to that that such a thing would be possible, of course, but I was an attorney in the case and I had no knowledge of anything of the kind.

Q. Did you not say a moment ago that you knew nothing about it whatever until the announcement was made to you by Marshall during the hearing of the testimony?

A. Yes, sir, and what I say now is that I don't think that suggestion would have gone from the side of the defense without my knowing it; that is what I say.

Q. That is what you mean to say?

A. That is what I say and that is what I did say.

Q. You said a moment ago that the suggestion for a settlement did not come from the defense?

Mr. WALSH.—We move to strike out the statement of counsel.

(Testimony of Henry C. Stiff.)

Q. Now, how long before this time had Mr. Inspector Zevely been in Missoula?

A. That I could not say. I was not always advised of the presence of Mr. Zevely in Missoula.

Q. You had seen him there, had you not?

A. I had seen him there; I saw Mr. Zevely, not in Missoula, but in Deer Lodge in the month of April, at which time he informed me that he came from Missoula—I don't mean Deer Lodge, I mean Anaconda.

Q. Did you know what his official business was there at the time?

A. No, I did not know. Of course, I had learned what his official position was, or at least knew something of the character of his business, and naturally supposed that he was engaged in official business. Mr. Zevely did not inform me what he was doing.

Q. Did you learn of the fact of his taking the testimony of Mr. Griswold, Mr. Bryan and several other witnesses?

A. Well, I heard of that at some time; just when I heard of it I am not prepared to say.

Q. Had you heard of it previous to this settlement?

A. I think I had.

Q. In other words, you had heard and knew from information which you relied upon that Mr. Inspector Zevely had been in the city of Missoula and was investigating the very subject matter and the transactions out of which this civil suit in which you were an attorney for the defendant grew?

(Testimony of Henry C. Stiff.)

A. As I stated, I think I heard of it before the settlement; whenever I did hear of it I had no reason to doubt the correctness of it, especially as I remembered what Mr. Draffen had said in our office as to what his purpose was and as to what he intended doing, and, of course, I naturally placed credence in the report that I heard that Mr. Zevely was investigating, because there was not anything to the contrary.

Q. You knew of the fact that Mr. Griswold, the plaintiff in the case, had made an affidavit before Mr. Zevely, did you not?

A. I think there was some statement made to that effect.

Q. Statement made where?

A. I think that this statement was made at the time—

Q. That the settlement was made, or the conference, I mean?

A. Do you propound that as a question or make it as a statement for me? I will make my own statement.

Q. It is a question.

A. The statement was made that Mr. Griswold had made an affidavit before Mr. Zevely. I think that statement was made by Mr. Griswold's attorney, Mr. Draffen, on the occasion when we were negotiating for a settlement; however, I may have learned of that part of it I cannot be positive as to that.

Q. I don't think you answered my question that I put to you, Mr. Stiff, the one just before that?

(Testimony of Henry C. Stiff.)

A. Well, I will do my best to do it if I can comprehend, and if I have failed to answer it, if you will have the stenographer read it or renew it, I will do the best I can to answer it. I don't know now just what particular question you refer to.

Q. The question that I put to you is this: "You knew, as a matter of fact, that Mr. Zevely was in Missoula investigating this matter and these transactions which in part form the basis of this lawsuit?"

A. Well, I understood he was, Mr. Maynard; I did not know it.

Q. You knew at the time—

A. If you will allow me, Mr. Maynard, I will state in this connection one thing that comes to me with reference to what he was doing, and that is the fact that I met him at Anaconda at the time that I stated, my business there was to examine the titles to some mining property, and at the time I was in the recorder's office making that examination, Mr. Zevely was also there examining the records, and, of course, taking that fact in connection with what Mr. Draffen had said in our office and some other general talk or rumors that I had heard, why, I concluded that that was what he was doing. Mr. Zevely never intimated to me, of course, in the slightest degree; the matter was not referred to at all.

Q. Now, Mr. Stiff, was not the fact that Mr. Zevely was on the ground and was doing what you knew he

(Testimony of Henry C. Stiff.)

was doing in the case or what you heard he was doing, taken in connection with the conversation that you have already testified to as having taken place between yourself and Mr. Draffen, was not that the reason that this case was settled?

A. I do not know it, if it was; of course, I am unable to say to what extent that may have operated on the minds of others, and not knowing that, of course, I could not say whether that influenced a settlement or not.

Q. You had no knowledge at the time of its influencing your conduct in any way?

A. No, I don't think it influenced me in the matter.

Q. Or Colonel Marshall?

A. Well, I am not prepared to say to what extent it may have influenced Colonel Marshall; I don't know whether it influenced him to any extent or not.

Q. Didn't you know of the fact that the grand jury was in session?

A. No. I am not sure now that the grand jury was in session at that time; it may have been. If it was not at that time, I think it is safe to say that it was in session very shortly after that.

Q. Didn't you know that this matter was to be called to the attention of the grand jury?

A. I had not been informed of that fact, of course, except as I heard it in a general way. Of course I had heard Mr. Draffen declaring what he proposed to do,

(Testimony of Henry C. Stiff.)

and the rumor had come to me that Griswold had made the statement that unless Cobban settled with him he was going to send him to the penitentiary or something of that kind, but as far as having any information on which I could rely or feel was correct that the grand jury was going to investigate the matter, I did not, no, sir; I had not been taken into the confidence of anybody in that regard.

Q. Of course, Mr. Stiff, you know that I, in asking the question, do not ask you as to whether you had received official notification from the Judge of the Court or from the United States District Attorney to the effect that this matter was to be brought before the grand jury?

A. Certainly; I understand what you mean.

Q. Now, I don't mean that.

A. No, and I hope the answer does not convey the impression to anybody that I supposed that you meant anything like that, because I did not so intend it.

Q. What I asked you and what I intended to ask you and what I hope you understood that I intended to ask you was that while you were engaged right there in the trial of this law suit, with all the conditions which you have testified to and other conditions which you may not have testified to, weren't you reasonably convinced from all the knowledge that you had at the time that the matter would shortly be brought before the grand jury?

(Testimony of Henry C. Stiff.)

A. Well, I will say yes, from what I had heard from what Mr. Draffen had said and what I had heard as to what Mr. Griswold had threatened to do, taken with the fact that I had understood Mr. Zevely was there investigating the matter, and from what I had seen myself Mr. Zevely doing, I thought it very likely that the matter would be investigated by the grand jury, but that was only, of course, an opinion that I formed from those facts.

Q. Certainly. Now, then, on that same basis of information and so on which influence men's actions, let me ask you further; didn't you know at the time that that fact which you have just testified to in your last answer was the moving cause which led to this sudden proposition of a settlement of this suit?

A. It was not as far as I am concerned; I cannot speak for anybody else.

Q. You say that Mr. Draffen had had a conversation in your office denouncing Cobban?

A. Well, I didn't put it in that way; I related as well as I could the substance of what Mr. Draffen said; I cannot say that it was denouncing Mr. Cobban.

Q. Well, you said that he had expressed his opinion in regard to the unlawful claims that Cobban had taken up or in substance that, did you not?

A. Yes, sir.

Q. And that, in his opinion, Mr. Cobban had been guilty of such offenses as should send him to State's prison?

(Testimony of Henry C. Stiff.)

A. Yes, sir, that was the tenor of his talk and, of course, in that connection he expressed his purpose to use that, what he considered to be a fact at any rate, for the purpose of forcing a settlement out of Mr. Cobban.

Q. There was no suggestion made at the time in any conversation that you had with Mr. Draffen but what he was sincere in his belief of the crimes that Cobban had committed, was there?

A. Why his manner indicated that he placed a great deal of reliance upon what his client, Mr. Griswold, had represented to him. I may say in that connection that that is usually the case with Mr. Draffen, that he is very positive in a case when he is engaged in it on one side or the other.

Q. And that, so believing, he felt that it was his duty as a citizen and as having been formerly an Assistant United States District Attorney and familiar with such matters, to inform the Government of the fact that such crimes had been committed?

A. Well, Mr. Draffen did not at first base his declared purpose to communicate with Mr. Zevely upon the ground that you have stated at all; he first placed it upon the ground that he thought it was a duty that he owed to his client in order to obtain what he believed his client's due, to do that, but when he and Colonel Marshall got into a rather animated discussion of the matter, he, in a measure, receded from that

(Testimony of Henry C. Stiff.)

ground and undertook to justify it on the ground of good citizenship and all that sort of thing, but that was not until after Colonel Marshall had in very forcible terms denounced such a course as Draffen expressed his purpose to pursue; then he did have something to say as to his duty as a citizen to report the fact to the Government, but not until then.

Q. And then the statement was made as you have testified in your direct examination?

A. It certainly was, or I would not have so testified.

Mr. MAYNARD.—I deem it unnecessary to consume any time in asking Brother Stiff in regard to the details of that matter, because it has already been gone over in detail on cross-examination of Colonel Marshall, and Mr. Howell and Mr. Draffen, and I think that there is no particular reason for further cross-examination as to that matter.

Q. I just wanted to call your attention, Brother Stiff, to one other part of the case. In regard to this mortgage of Wells' that you referred to, do you say that these mortgages were given before the final proof was made?

A. I did not say so, no. What I did say was that we were instructed to take the security, and let these people have the money, and it was represented to us that that was the purpose for which the money was to be used, both as to the directions which we received

(Testimony of Henry C. Stiff.)

and by the parties themselves when they executed the papers and received the money.

Q. Now, let me understand you. Now, who paid this money into the land office?

A. The parties themselves as far as I know; I never saw it after we gave it to them.

Q. Was the mortgage given on the same day that the money was paid into the land office?

A. I don't know; I don't know that the mortgage was given before the money was paid to the land office, but of course, as I said, understanding that it was to be used at the time of final proof, I naturally supposed that the mortgage was given and the money delivered to them before they proved up and before the land office received the money due to the Government for the land. Of course I have no actual knowledge, understand, as to the time when they did in fact prove up, but I understood—

Q. Who did have personal charge of that business there? A. You mean in the land office?

Q. No, of this mortgage; who drew the mortgage?

A. Why one of them is drawn by Colonel Marshall and the other I drew.

Q. I am asking simply for information as to when this mortgage was given, before or after these parties had proved up?

A. Well, as I was trying to explain to you, Mr. Maynard, I have no personal knowledge as to the time when

(Testimony of Henry C. Stiff.)

they actually proved up, but what I understood was that the date on which they were to prove up was at some time subsequent to the time when the mortgages were given, but as to actually knowing it, I don't know. The proof was offered in the Helena land office, and the mortgages were executed in Missoula. Our instructions were to prepare the papers and to furnish them the money, and that they desired it for the purpose of paying into the land office for the land, and they so represented at the time that they got the money, that they were getting it for the purpose of paying into the land office the money when they did prove up, which I understood to be at some time, possibly one or two days subsequent to the time the mortgages were executed.

Q. Yes, that is what I was asking you?

A. That is what I was trying to explain.

Q. Then, as a matter of fact, do you loan money and take a mortgage and note as security on the land of an entryman before he has made his final proof and got his duplicate receiver's final receipt?

A. That is sometimes done; I understood that that was being done in both of those instances, because often the entryman has not the money necessary of his own to prove up, and he borrows the money for that purpose, and to secure the person who makes the loan he executes a mortgage on the land that he is about to prove up on.

Q. What has he got to mortgage, if he has not made his final proof, and has not got the final receipt?

(Testimony of Henry C. Stiff.)

A. Well, whatever title he would subsequently acquire would inure to the benefit of the mortgagee. I state that as a legal proposition; possibly I am wrong, but I don't think I am.

Mr. WALSH.—The Code of Montana kind of supports you in that position.

The WITNESS.—Yes.

(By Mr. MAYNARD.)

Q. Then, that is on the basis that he mortgages something which at the time he does not possess, but which, if the money which he obtains is in fact used for the purpose of paying for the land and he secures whatever interest comes from that fact, then that would inure to the benefit of the mortgagee?

A. That is as I understand the matter; it is perhaps more of a legal proposition than anything else. He gives the mortgage; he has perhaps some right to the land at that time, though the legal title to it is still in the Government; whenever he acquires the legal title it will inure to the benefit of his grantee, whether it be a mortgage or a party to whom he might execute a deed, and as a matter of course if he does not acquire any further right —for instance, if he did not use the money or any money for the purpose for which he procured it, or should not for any reason make his proof and obtain title from the Government, why the security perhaps would not be very valuable.

Q. You would have no security at all, would you?

(Testimony of Henry C. Stiff.)

A. Well, I would not be willing to advance anything on it, and consequently I do not think it would be very valuable. Of course there is some confidence placed in these people who do this; they are people usually that they think will go ahead and perfect their title.

Q. So it is your custom to do that as attorneys for the Big Blackfoot Milling Company, to loan the money and take a mortgage and note before the final proof was made? A. Well, I don't think—

Q. Or didn't you, as a matter of fact, as a rule, go to the land office yourself and pay the money in for the entrymen? A. I am sure—

Q. That you received from the company, and after the receipt was issued, then have them execute the mortgage?

A. I don't recall a single instance, Mr. Maynard, in which I ever did that and I don't know of an instance where Mr. Marshall ever did it, that is, go to the land office and pay the money at that time. Mr. Vogel, the timber inspector, usually arranged those matters with the parties. The parties would apply to him for a loan, and wherever he thought it safe and advisable to do it, it was made, and we received our instructions then to prepare the necessary papers and make the requisition on the Big Blackfoot Company for the amount of money, and it was simply a loan with that mortgage as security. In this second instance of Mrs. Wells, I remember particularly that there was some inquiry made by them as to whether or not the matter would have to run the full

(Testimony of Henry C. Stiff.)

time called for in the note, if they, by the sale of the land or any other way had the money which would enable them to meet it, and I stated to them that the Blackfoot Milling Company would be willing at any time to get back the money they had advanced with the interest, provided for in the note, any time they wanted to pay it; it was simply a straight loan.

Q. And your custom was to take the note and mortgage and record the same in the proper office and allow them to take it up when they could before the maturity of the note?

A. Oh, yes, whenever they would come. They understood that. I don't know, I don't recall now any instance in which they in fact did that, but they were always given to understand that any time they wanted to pay it it was all right, that the money would be received, and it would not be required to run the full time called for in the note unless they desired.

Q. In the conversation that you had with Mrs. Wells, when she spoke to you about being permitted to take up the note before its maturity if she sold the land or got money from any other source, do you remember now her specifying any source in particular?

A. No, I don't, I don't recall any at this time.

Q. Let me refresh your memory. Do you know where she came from previous to coming to this State?

A. I did not.

Q. You have but very little acquaintance with them, then? A. Very little.

(Testimony of Henry C. Stiff.)

Q. In that conversation which she had with you might she not have said that she was expecting money from her father, or her father's estate in Minnesota?

A. I don't think she said anything of that kind; I don't remember it.

Q. You have no recollection on the subject. Mrs. Wells, I will say to you by way of passing, Mr. Stiff, claims that this money that was paid for this land came from her father's estate in Minnesota, that is all.

A. Well, I don't know anything about that; she did not say anything to me about that.

Q. That you remember?

A. No, I don't remember.

Q. But you do remember the fact of her asking you if she did get money from other sources, if she could be permitted to pay this money up before the maturity of the note?

A. Yes, she made some inquiry to that effect.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Stiff, as you recall the matter now, what was the difference between these two affidavits, what objection, if any, did Mr. Griswold make or Mr. Draffen state concerning the affidavit that was first prepared in the course of the settlement?

A. Well, I don't remember, Mr. Walsh, what the differences were; as I stated, it was read over, but I don't remember now in what respect it differed from this one.

(Testimony of Henry C. Stiff.)

Q. You don't recall?

A. In fact, I haven't read and do not recall what is in this one just now.

Q. I wish you would look it over again.

A. I have it here, yes. Of course, I recall some things that were in it, but not all. I have read this just now, but I do not as yet recall what the difference was.

Q. Now, you found it necessary, as I understood, when you were taking the testimony in the case of Griswold against Cobban, to go up to Major Pound's residence to take his testimony?

A. Yes, sir, it seemed to be absolutely necessary in order to procure it at all.

Q. He was then ill?

A. He had rheumatism, as I understood; we found him confined to his bed, and he did not leave his bed while giving his testimony.

Q. What do you know about his general physical condition, Mr. Stiff?

A. Well, he is considerably advanced in age, and he is also lame in one of his limbs, and uses a cane in walking, and does not walk well by any means.

Q. Such information as you have with reference to the employment of Mr. B. Sparks, as I understand you, was what you gathered by what was told you in connection with the case that you refer to?

A. Well, I had heard in a general way before that, I think, that he was inspector for the Western Lumber Company, or some such position as that.

(Testimony of Henry C. Stiff.)

Q. What personal knowledge had you ever had of the fact yourself?

A. I have not any; I never had any transactions with him. I think I heard him testify at one time that he was in that capacity in a case in the Missoula land office; that, however, was subsequent to this transaction.

Q. What knowledge have you as to whether he is at present employed by the Western Lumber Company or not? A. I don't know anything about it.

Q. What connection, if any, did Mr. Hershey have with this case after you came into it?

A. Nothing at all that I was aware of; my recollection is that his name was withdrawn from the case before or about the time we entered, and if he had any connection with it after that in any capacity, I never had any knowledge of it.

Q. Now, you say, Mr. Stiff, in answer to the question addressed to you by Mr. Maynard that you had no information with reference to any proposition of settlement coming from Mr. Griswold prior to the time that Colonel Marshall spoke to you. What, if anything, had you heard from any source prior to that time expressive of a desire on the part of Mr. Griswold to obtain a settlement of the case?

Mr. MAYNARD.—I object to that as not proper redirect examination; second, for the reason that it is hearsay; third, for the reason—

Mr. WALSH.—That is enough.

(Testimony of Henry C. Stiff.)

Mr. MAYNARD.—Oh, no—that it has already been inquired into and that the witness has testified that all he knew or had heard about the matter was that Sparks as a friend of both parties was moving in this matter, and that it is entirely incompetent for the counsel to ask their witness on a redirect examination as to indefinite, vague rumors, which is suggested in the question which he now propounds to the witness.

A. Well, the first intimation I had that the plaintiff desired a settlement, I might say, was the conversation that I had with Mr. Draffen on the first occasion; that was manifestly his purpose, to reach a settlement of it. I do not think I heard anything definite until the occasion that I have already referred to. There was a sort of vague rumor came to us through just what channels I am not prepared now to say, that the plaintiff desired a settlement of the matter, but there was nothing definite up to that time.

Q. You said something in the course of your examination, Mr. Stiff, about expressions coming to you from Griswold that if Cobban did not settle he would put him in the penitentiary or something of that kind.

A. Well, that came, I do not know how it reached us—it came through some channels or other.

Q. Those are the rumors that you speak of?

A. Yes.

Q. Now, I take it that the sole question involved in the action of Griswold against Cobban was the state of the accounts between the parties, and as to how much

(Testimony of Henry C. Stiff.)

work Mr. Griswold had done and what payments had been made to him?

A. That was the sole question. That was the view of the Court evidently, because it was referred to a referee for an accounting.

Q. I wish you would state to what extent, if at all, the question of the facts touching the legality or illegality of the particular entries was involved in that action.

A. Well, I will say both as an individual and as a lawyer that I do not think they were involved at all; I did not think there was anything in the pleadings that raised the question, and there was nothing in the trial of the case that seemed to be based on the idea that it was necessary to inquire into the legality of the entries.

Q. Now, you told counsel that at the time that Mr. Draffen first spoke about this matter in your office, there was nothing in what he said or in his manner of expression that he entertained any doubt as to the truth of the statement made to him by Mr. Griswold concerning the facts in relation to these entries. Now, I wish you would state for our information what, if anything, there was in the statement made by Mr. Draffen or in his conduct at the time that this affidavit, exhibit "E," was made, that indicated to you that he entertained any doubt as to the truth of the statement made in that affidavit made by Mr. Griswold.

A. Why, I don't think there was anything at all indicated that he entertained any doubt but what Mr. Griswold was swearing to in this affidavit was true.

(Testimony of Henry C. Stiff.)

Q. What protest, if any, did Mr. Draffen at that time make or register against Mr. Griswold making this affidavit?

A. He did not make any in my presence or to my knowledge.

Q. In the affidavit of Mr. Griswold, the affiant says: "Affiant further states that in truth and in fact affiant has no knowledge of any act done or authorized by said Robert M. Cobban in the procurement of title to the land taken by parties under the Stone and Timber Act of Congress which were in violation of said act or in violation of any law of the United States relative to the acquiring of titles to land." Now, what have you to say, Mr. Stiff, as to Mr. Griswold's having said anything at the time that this affidavit was tendered to him for execution to the effect that that was not a statement of any facts but was a mere conclusion of law, and being a mere conclusion of law that he could make that statement?

A. He made no such statement as that.

Q. The counsel asked you, Mr. Stiff, as to whether you had not sometimes in loaning money to parties who desired to make final proof on lands, pay the money into the land office first and then take a mortgage afterwards to secure the amount. Have you ever pursued that course?

A. No, I don't think so; as I stated to Mr. Maynard, I don't remember of having gone to the land office myself at any time.

(Testimony of Henry C. Stiff.)

Q. I do not refer particularly to the fact of your having yourself gone to the land office and paid the money, but I refer to the fact of your subsequently taking a mortgage after the proof had been made, or do you always take the mortgage beforehand?

A. Well, I could not say that I always did it, always took a mortgage beforehand, but I do not recall to mind any instance in which the mortgage was taken afterwards, though it may have been done.

Q. Would you personally take a mortgage, say, upon a homestead claim prior to the time that proof has been made?

Mr. MAYNARD.—Objected to as entirely immaterial and irrelevant to this issue and not proper redirect examination.

A. I don't remember any instance in which a loan was made to a party making a homestead entry.

Q. Now, the counsel asked you about the conversation had with Mrs. Wells at the time that she got the money, and as to any expression she made with regard to the source from which she might thereafter get the money with which to satisfy the loan. Do you now recall anything about what was said by Mrs. Wells as to how she might be able to acquire the money to pay off the loan prior to the maturity of the note?

Mr. MAYNARD.—He has already said that he did not.

A. Well, there was something said about an estimate that had been made as to the value of her claim, that she was not satisfied with the valuation that had been placed

(Testimony of Henry C. Stiff.)

upon it, and in that connection, she made inquiry if she should in any way obtain the money to pay this off before the maturity of the note, if she would be permitted to do so, and I gave her the assurance that she could at any time.

Q. What, if anything, was said to her as to her possibly making a sale of the property and raising the money in that way?

A. I think there was something said about that she might sell the land or find somebody that was willing to pay what she thought the land was worth; she mentioned that fact in that connection.

Recross-examination.

(By Mr. MAYNARD.)

Q. Mr. Stiff, you say that in the pleadings in the case of Griswold against Cobban, and all the way through and on the taking of the testimony, the same question seemed to be in regard to the services that Mr. Griswold had rendered Cobban and the value of the same, and that the question of the legality or illegality of Cobban's act was not considered?

A. I so stated, and I think that is correct. Of course I am giving now my understanding of the case; it was brought about by the pleadings in the case.

Q. If that was so, when you have come to a settlement or an agreement as to the amount of money that you were willing to pay the plaintiff, why wouldn't an ordinary stipulation discontinuing the case, setting forth

(Testimony of Henry C. Stiff.)

the fact that a settlement had been made and that the parties agreed to a discontinuance of it, why wouldn't that be sufficient?

A. For the purposes of the case?

Q. Yes. A. I think it would.

Q. In the light of what you have just testified to—

A. Yes, a stipulation of settlement followed by a dismissal of the case as settled certainly would have been sufficient.

Q. Now why then, with the situation just as we have it now, was this affidavit that is marked as an exhibit in the case and which is before you, extracted from Mr. Griswold as a condition precedent to the settlement?

A. In the first place you are assuming that the making of this affidavit by Mr. Griswold was a condition precedent to the settlement.

Q. Well, I assume that because I think all of the other witnesses in the case have so testified.

Mr. WALSH.—No, no.

Q. I think that Colonel Marshall—

Mr. WALSH.—That is your construction of how they testified.

Mr. MAYNARD.—I claim that Colonel Marshall so testified, and I know that Mr. Howell so testified and I know that Mr. Draffen so testified, and I know that Mr. Griswold so testified.

Mr. WALSH.—We object to this statement of counsel as utterly irrelevant and immaterial and improper to be

(Testimony of Henry C. Stiff.)

made to the witness; it does not make any difference to this witness what anybody else testified to.

The EXAMINER.—Yes, you must put a question.

The WITNESS.—As I said in starting to answer your question, your assumption that this affidavit of Griswold was a condition precedent to settlement was not in accordance with my understanding of the case; it was made at the same time, and as I now recall, during the negotiations which culminated in a settlement; Mr. Cobban stated repeatedly that he was informed and evidently was satisfied that Mr. Griswold had made some affidavit or had given some testimony in the course of this investigation made by Mr. Zeveley, which he, Mr. Cobban, said was false, and that he wanted, while they were settling their differences—he wanted Mr. Griswold to tell the truth on that proposition and he wanted it in a shape so that he could know that Mr. Griswold could not get away from it, and he insisted at the same time that he would make the affidavit, which he did do.

Q. Cobban insisted?

A. Cobban insisted that he make the affidavit, setting forth what he said was the truth, and which Mr. Griswold said was the truth and swore was the truth. Now these are the circumstances, as I understood them, under which the affidavit was made.

Q. Don't you know that there were other conditions imposed as conditions precedent to the settlement, and one of them was the withdrawing of all the papers and

(Testimony of Henry C. Stiff.)

exhibits and statements which had been used in the case?

A. Yes, sir, that was agreed to, that that should be done; there was no—

Q. Don't you know—

Mr. WALSH.—Let him answer.

The WITNESS.—The matter was discussed on that occasion and it was agreed that there was no necessity or occasion for anything that had been used as an exhibit, checks, for instance, in fact, everything that had been used, inasmuch as a settlement had been effected, that there was no necessity for their continuing as a part of the record of the case, and it was mutually agreed that everything should be withdrawn.

Q. Don't you further know that Mr. Cobban insisted in addition to Mr. Cobban making this affidavit, that he should deliver over to him the original contract which had been made between them?

A. Well, you ask if Mr. Cobban did not insist. Now, I don't know; I think that was agreed to, and that it was done; whether it was done because of the insistance of Mr. Cobban or whether in fact Mr. Cobban did insist, I am not prepared to say now.

Q. Don't you further know that it was talked over there that an attempt should be made to secure the affidavit which Mr. Griswold had made before Mr. Zevely and get it out of his hands?

A. Why, I don't recall anything of that kind, Mr.

(Testimony of Henry C. Stiff.)

Maynard. Do I understand you correctly that it was talked over that an attempt should be made to secure from Mr. Zevely out of Mr. Zevely's hands the affidavit which Mr. Griswold had made?

Q. Yes. A. Why, I don't think so.

Q. Don't you know furthermore, that this very affidavit that was obtained from Mr. Griswold on the insistence of Mr. Cobban was used before the grand jury in the hands of Mr. Howell, one of your associate counsel?

A. I was so informed, yes, sir.

Redirect Examination.

(By Mr. WALSH.)

Q. What were you informed about that, Mr. Stiff?

A. That this affidavit made by Mr. Griswold at the time of this settlement was used before the grand jury, being produced there by Mr. Howell; I understood that to be Mr. Maynard's question.

Q. Yes, but that is not the question; you were asked by Mr. Maynard as to whether you did not know that the affidavit made by Griswold before Zevely and which has surrendered up into the possession of Mr. Howell had been used before the grand jury and was produced there by Mr. Howell?

Mr. MAYNARD.—If I asked any such question as that, I am completely at fault with Brother Stiff. I did not know that I asked such a question as that; at least, if I did, I did not intend to at all, and I don't think I did; and I ask the reporter to read the question.

(Testimony of Henry C. Stiff.)

Mr. WALSH.—I will be very glad to accommodate you. Read the question.

The EXAMINER.—I think you are mistaken, Mr. Walsh.

(Question read.)

Mr, MAYNARD.—Who is mistaken now?

Mr. WALSH.—I certainly am not.

The EXAMINER.—Go on with your questions.

Mr. MAYNARD.—I didn't ask any such question at all.

The WITNESS.—I understood Mr. Maynard's question as to the use of an affidavit before the grand jury brought there by Mr. Howell to be the one which I now have in my hand and being the one sworn to by Mr. Griswold before me at the time of the settlement of the suit of Griswold against Cobban. As to the affidavit made by Mr. Griswold before, or which Mr. Zevely secured, I know nothing whatever about it.

Q. What knowledge have you as to the procurement of that affidavit or any efforts made to procure that affidavit and its going into the possession of Mr. Howell?

A. I have no knowledge at all, Mr. Walsh, with reference to that. I do not recall anything that occurred looking to the procuring of that affidavit.

Q. Now, do you remember anything having been said at the time this settlement was effected concerning a

(Testimony of Henry C. Stiff.)

copy of that affidavit which Mr. Griswold had and which the parties desired to see for the purpose of being apprised of what Mr. Griswold did swear before Mr. Zevely?

A. Yes, sir, it was there made known at that time, how Mr. Cobban had in some manner obtained the understanding that Mr. Griswold had retained a copy of the affidavit which had been secured by special agent Zevely, and Mr. Cobban did manifest a desire to procure that copy in order to be apprised of what Mr. Griswold had said in the affidavit.

Recross-examination.

(By Mr. WALSH.)

Q. And wasn't that as a matter of fact surrendered up to you?

A. Not to me; I never thought I am quite sure, and if it was surrendered, it was something that I did not know anything about.

Q. I am now referring to the copy.

A. Yes, I so understand your question to be with reference to the copy.

Q. You have no knowledge on that subject?

A. None whatever.

It was stipulated between the parties that the examiner might certify, after reading and correcting the transcript of the testimony of Mr. Stiff, that the same was correct with like effect as if it had been read and corrected and signed by the witness himself.

(Testimony of C. C. Willis.)

I hereby certify that I have read and corrected the testimony transcribed as given by Mr. Stiff in the foregoing pages, and that the same is correctly transcribed.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

C. C. WILLIS, after being duly sworn as a witness for the defendant, testifies as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Willis, where do you live?

A. I live at Plains, in Missoula County, in the western part of the State.

Q. How far is that from Missoula?

A. Seventy-eight miles.

Q. On the main line of the Northern Pacific Railway?

A. Yes, sir.

Q. What is your business?

A. Well, farming and stockraising is my principal occupation.

Q. Where were you during the spring, summer and fall of the year 1899?

A. I was home a great deal of the time and in that vicinity, around Plains.

Q. What part of the year, if any part, were you up in the Blackfoot country?

A. I was not in the Blackfoot country at all.

(Testimony of C. C. Willis.)

Q. How often, if at all, were you in the city of Missoula during that year?

A. Oh, probably about once every thirty days, likely; that is about my average.

Q. And then remaining about how long?

A. Generally about one day and back the next; about two days generally. It takes about two and three-quarter hours to run from Plains up there.

Q. Were you subpoenaed as a witness before the grand jury sitting in the city of Helena during the month of June of last year? A. Yes, sir.

Q. And in reference to what matter with any were you called there?

A. Well, I was called there, that is, I was subpoenaed before the grand jury, and I did not know what for until I got up there, and then it seemed after I got there that the first information I got—I met Mr. Griswold. I met him on the corner right back Gans & Klein's gent's furnishing goods establishment there, and I was on my way up to the Helena Hotel; I had just got in, and I thought probably I could get some information up there, and I met Mr. Griswold right on the corner. I was acquainted with him, and we got talking, and I asked him what he was doing up there, and he said he was before the grand jury, and so in conversation he said he would go up to the Helena Hotel; he wanted me to meet Mr. Zeveley, that he had me subpoenaed before the grand jury. I asked him

(Testimony of C. C. Willis.)

what he wanted to prove by me, that I did not know anything about their Blackfoot timber business at all —I have known that Mr. Griswold and Mr. Cobban had had some trouble, but I did not know a thing in the world about it. So we proceeded up to the Helena Hotel, and we got there I suppose probably at one o'clock or possibly later. I was subpoenaed, I think, to appear at 2 o'clock on that day. When we got up there we did not see Mr. Zeveley; he was either at lunch or out somewhere, and we could not see him, and we sat down in the office of the hotel there, and Mr. Griswold told me that he had—

Mr. MAYNARD.—Now, wait a moment, please. I will ask you the purpose for which this witness is called?

Mr. WALSH.—We desire to show the attitude of Mr. Griswold towards this prosecution; we desire to show the facts concerning this matter, so as to advise the Court what credence is to be put on his testimony.

Mr. MAYNARD.—Was this called to the attention of Mr. Griswold when he was on the stand?

Mr. WALSH.—We do not offer it exactly for the purpose of impeaching Mr. Griswold, but to show the bias and prejudice of Mr. Griswold.

Mr. MAYNARD.—I desire to save the benefit of an exception and object to the proposition of counsel to the witness being interrogated in the line in which

(Testimony of C. C. Willis.)

he is now being asked, for the reason that the same is entirely immaterial and irrelevant to this issue, that the same is hearsay, and that it is for no purpose that I can conceive as admissible in this case.

Q. Proceed, Mr. Willis.

A. Well, we had a talk in the office at the Helena Hotel and he told me that he had had Mr. Zeveley come out and they were making up a case, and they had it before the grand jury then, to indict Mr. Cobban for fraudulent timber and stone entries, and that it was his intention to send him to the penitentiary, that is what he was working at, and he did not care what it cost him, so he landed Mr. Cobban in the penitentiary. I told him I knew nothing about it, and he told me he thought probably I might know of some fraudulent entries down in our country, and I might probably be able to give some evidence, and I told him I did not know anything about the timber and stone business, and that I had not taken up any timber myself and had nothing to do with it, and knew not a thing in the world about it, and I would like to know when I could get off. So we went there, I think, about two o'clock, over to the United States courtroom, and I met Mr. Rogers, the District Attorney, and I asked Mr. Rogers what I was subpoenaed there for, and asked him if he knew anything about what time I could get off, or what time I would testify. He said he couldn't tell me anything about it, that I would have to see Mr. Maynard,

(Testimony of C. C. Willis.)

that he did not know anything about it at all about this timber business, and so I think probably while we were talking or shortly after, Mr. Maynard came out of the office of Mr. Rogers, and Mr. Griswold introduced me to him, and Mr. Maynard asked me about the case, and I told him I did not know a thing in the world about it, and he told me then that I would have to see Mr. Zeveley, that he had to take such evidence—he was sent to prosecute the case, and such evidence as they produced he had to take, and he did not know anything about it, and to go at about eight o'clock to the Helena Hotel and we would talk the matter over, and if they saw that they had no use for me I would be discharged. So at eight o'clock I went around to the hotel, and when I got there I did not see Mr. Zeveley or Mr. Maynard either one, but Mr. Griswold was there at the time I went, and I asked him where they were, and he said they were in his rooms. We talked a while, and he said he would go up and get them. I told him I was in a hurry and I wanted to get away as soon as I could, so he went up and was gone a few minutes, and Mr. Zeveley came down and Griswold introduced me to him, and Mr. Zeveley took me out in front of the hotel, and we were sitting there and we had quite a talk, and he told me that Mr. Griswold had had me subpoenaed there, and that he did not know anything about it, but that Mr. Griswold had told him that I could give him some information, so when I told him I did not know a thing in the world about it, that as far

(Testimony of C. C. Willis.)

as I knew everything was regular in our part of the country, and I did not know anything about that Blackfoot business at all, and I thought Mr. Griswold was trying more—

Mr. MAYNARD.—Never mind.

Q. Never mind what you said.

A. So he told me then to come around next morning when court met, I think it was ten o'clock, and it would have it arranged with Mr. Maynard that I would be discharged. So in the meantime, talking with Mr. Griswold, he told me that he had got the worst of it from these people—

Mr. MAYNARD.—I object to that for the same reason that I stated before.

A. He finally told me that he would like to get a settlement out of the thing if he could; wanted to get some money out of it, and asked me if I was not acquainted and friendly with Mr. Clark? I told him that I had known Mr. Clark quite a good while, and he wanted to know how it would be for me to talk with Mr. Clark about the matter, and I told him I would talk to him about a thing of that kind at all, that it was none of my business, and Mr. Clark would think it was none of my business, and I would have nothing to do with it. He asked me if I could not get in and help him make the case stick, that he had a good job promised him from the Government if he could make this case stand. I told him I would not be an informer

(Testimony of C. C. Willis.)

or anything of that kind, but I would not tell anything if I knew it unless I was forced to do it, and I said Mr. Clark bought that timber innocently and Cobban got his money, and if anybody lost by it it would be Mr. Clark, and he had always been friendly to me and I would not have anything to do with it. So I went around next morning and found Mr. Maynard, and he told the clerk to discharge me.

Cross-examination.

(By Mr. MAYNARD.)

Q. Who did you tell this conversation to first?

A. The conversation that I had with Griswold?

Q. Yes.

A. I don't think that I told it to anybody until here probably two or three weeks ago, and I first told it to Mr. Dinsmore of Missoula.

Q. Cobban's old partner?

A. He was a partner of Mr. Cobban at one time.

Q. How did you come to tell it to Mr. Dinsmore?

A. Well, the way I came to tell it to Mr. Dinsmore, I saw in the "Standard" where a man had testified in this case from Hamilton in regard to Mr. Griswold trying to blackmail the Anaconda Company, or the Blackfoot Milling Company, I forget which, and it just entered my head that that was what he was after in this other case, and I so stated to Mr. Dinsmore. I wrote Mr. Dinsmore just the conversation that I had with Mr. Griswold, and I had not thought anything about it

(Testimony of C. C. Willis.)

since I had had the conversation, but I told Mr. Griswold at the time that I had the conversation that I thought it was a shame for any man to bring in people that were innocent into a thing of that kind, and drag women and children into a case of that kind where he had been the prime mover in the matter himself. I had talked with Griswold a number of times in Missoula about the timber business at the time they were getting up this timber on the Blackfoot, and I could have had a claim up there if I had gone up and taken one up, just the same as the others, but I never used any of my rights, my homestead rights or anything; I never used any of my right. I did not take to it some way.

Whereupon further hearing was adjourned until 2 o'clock P. M.

Tuesday, May 6th, 1902, two o'clock P. M.

Hearing resumed, pursuant to adjournment.

C. C. WILLIS, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. You said just before adjournment this noon, Mr. Willis, that you could have taken up a claim under the Stone and Timber Act, just the same as others were doing, but for some reason or other you didn't want to do it?

A. Well, I said I could have taken up a timber and stone claim. Mr. Griswold talked to me about it, say-

(Testimony of C. C. Willis.)

ing he was hunting up claims there for parties, and if I wanted a claim, why he would put me on to one. But my understanding of it was that I was to pay him fifty dollars for putting me on to a claim. Nothing was said to me about the amount of money and nothing was said about a transfer of the claim, but he just told me that he was in that business, looking up claims for different parties.

Q. Where was this; where was he when he told you this? A. In Missoula.

Q. When?

A. That was—I think that was in the fall of 1899—must have been—no, I think it was in the fall of 1900, at the time they were taking up these claims; I think it was in 1900.

Q. No, you are mistaken, it was in 1899.

A. Well, that was the time, or about the time that everybody was taking up claims, and they were taking up the timber in that country at that time; that is, they were locating it.

Q. And where were you living at that time?

A. Well, I was living at Plains; I have been living there for fifteen years.

Q. Where are the Plains?

A. The Plains are west of Missoula, seventy-eight miles, right on the main line of the Northern Pacific railroad. I was in Missoula, though, very often. I had been—

Q. Seventy-eight miles from Missoula?

(Testimony of C. C. Willis.)

A. Yes, sir.

Q. In this State? A. Yes, sir.

Q. On the other side of Missoula?

A. Yes, sir, the other side.

Q. Oh, it is on the other side of Missoula?

A. Yes, sir, it is the other side of the Flathead reservation; the reservation is between Missoula and Plains. It takes up, well—about four-fifths of the district, I should say.

Q. What were you doing at Plains; what have you been doing there for the last fifteen years?

A. Well, I have been farming and raising stock, and I have also done considerable contracting; I didn't confine myself to any particular business, but my principal business is raising stock and farming; I have got a farm there, and I have been there ever since 1887, from that on.

Q. Where did you get acquainted with Mr. Griswold?

A. I met him in Missoula there, at the time they were taking up this timber; I met him a number of times there; I was very well acquainted with him; that is, the same as you would be with any man you would meet that way in business, and who had his home down there. I never had any special acquaintance with him, any more than any man I would meet.

Q. How did you happen to get acquainted with him?

A. I suppose the reason I got acquainted with him

(Testimony of C. C. Willis.)

was that he was doing business with Mr. Cobban, and these men that I was personally acquainted with around in Missoula there; that is probably the reason I got acquainted with him. Otherwise, I might never have got acquainted with him.

Q. Well, if you lived seventy-eight miles west of Missoula, where was he living?

A. I don't know where he was living at that time; I think he lived in Missoula.

Q. You think he lived in Missoula at that time?

A. Yes, sir.

Q. Do you know where he lives now?

A. I don't know where he lives now, but he told me at the time that that was his business, working in this timber.

Q. So the way you got acquainted with him, you met him at Cobban's office?

A No, I never met him at Cobban's office because—Mr. Cobban's office, as remember it at that time, was in the Higgins Block. I never was in the office; I never had any business with Mr. Cobban or with Mr. Dinsmore, but being acquainted with their friends, and my friends being almost identically the same, why we met very often, and I was there very often. I was railroad contracting a good deal at that time, and I had considerable business in Missoula; was probably there two or three weeks at a time; sometimes two or three times a week. I had a lot of things to do at the time they were taking up this timber, and that is the reason

(Testimony of C. C. Willis.)

I didn't take up a claim; I didn't have time to go and look it up; that is the one reason why I probably met him. If I had not met him then, I probably never would have met him.

Q. How did you come to meet him at Mr. Cobban's office?

A. I never met him at Mr. Cobban's office. I met him just as I would meet any man and get introduced to him, and I got to talking with him as men usually do, about business, and he told me his business. He told me he was looking up timber for Mr. Cobban; he told me he was cruising up in the Blackfoot country, and tthat he was looking up up land; looking up timber and stone claims, and wanted to know if I wanted one, and said it was a good proposition. I could have had a number of men put me onto a claim for fifty dollars, that is, to locate me on a stone and timber claim.

Q. Well, then, as a matter of fact, at this time you were almost a stranger to Mr. Griswold?

A. Why, certainly; I am not very well acquainted with him now, any more than I told you I met him.

Q. And the only acquaintance you had with him was this chance meeting as you have testified in Missoula?

A. I met him on the streets in Missoula, and talked with him; I never had any particular meeting with him, but it was common talk and everybody seemed to be talking about it at that time; they were talking about timber and stone claims, and I, being in Missoula, I met these different parties and eventually Mr. Griswold,

(Testimony of C. C. Willis.)

and I talked to a number of men and got a good deal of information about it; that is, about the timber and stone claims. There were some timber and and stone claims taken up and down in my vicinity. There was a number of men taking up timber and stone claims there. They were looking up the lands the same as Mr. Griswold told me he was, and they told me where certain claims were, but I never ran on to any of these, because I did not—in fact, I never had the money to put into them. I didn't know whether it would turn out all right or not, at that time. I didn't know whether a man would make anything out of it or not.

Q. You didn't know that?

A. No, I knew the Blackfoot Milling Company had been for years there taking up timber, because I had been up in the Blackfoot country there seven or eight years before; I knew there was a vast amount of timber up there at the time they were cutting up there, and it seemed to be the business of everybody to get a timber and stone claim there.

Q. Well, what was the occasion that you understood at the time, of this excitement; what caused this particular excitement?

A. Well, having some knowledge of the fact, I suppose, that timber was going into the market, and that the timber would be taken up, and might appreciate in value; and people, I suppose, wanted to use their rights, and I suppose they thought that they had better get in

(Testimony of C. C. Willis.)

and take it up. One reason why I didn't take up a timber claim was that I was at one time on the board of appraisers and we appraised timber at ten dollars, and I made up my mind that I didn't want to take any up at that price; that there wasn't very much in it.

Q. You didn't hear from anybody, did you, that if you took up a claim that you could get money from somebody else to pay for it? A. No, sir.

Q. You never heard that at all?

A. Never heard that at all; nobody ever talked to me, because there never was a time that I couldn't have got that much money without any trouble, if I wanted to; but nobody ever told me anything of the kind, or that I could sell the claim after I got it. It seemed to me that I could use my right, so long as there was a law on the statute book and the timber was there to be taken; that was my understanding of it. In fact, I did not know at the time that Griswold was taking up timber for Mr. Cobban; I didn't know anything about it.

Q. You didn't know anything about it?

A. No, sir, he never told me that he was looking up timber for Mr. Cobban; he told me he was in that business and would put me on a claim, if I wanted him to, for fifty dollars.

Q. He didn't tell you where you could get the money to pay the expenses of taking up a claim?

A. No, sir.

Q. Or what you could do with it? A. No, sir.

Q. And you didn't hear from any of the people, or

(Testimony of C. C. Willis.)

from any source, that the people were getting money from Mr. Cobban to pay for those claims?

A. No; in fact, I didn't know that Mr. Cobban was in the timber business. While I had known Mr. Cobban for a number of years, I knew he was largely interested in real estate, and was quite active, but I did not know he was in the timber business at that time.

Q. You didn't know that he was buying timber at that time? A. No, sir.

Q. Did you suppose that in this rush for taking up timber claims that you have testified to, that the people were paying their own money?

A. Well, I never supposed they were, I knew what it would cost me. I went far enough to make that inquiry. It would cost me about $450.00, but I supposed that everybody was to put up their own money.

Q. Who did you learn that from?

A. Well, I think probably that I learned this from the land officers. I have some little business to do with the land office. Most of the land that I got I bought from the railroad company. I bought one timber and stone claim from a man that had proved up, and had it as a pasture. That is the way I come to know what it cost. He told me what it had cost him to prove up on it.

Q. So you was attending to your business at your home when a subpoena was served upon you to attend before the grand jury in Helena?

A. Yes, I was woke up about ten o'clock at night

(Testimony of C. C. Willis.)

by the United States marshal coming to my house; I was asleep at the time.

Q. And you had no talk with Mr. Griswold?

A. I didn't know that there was any case. I had seen in the newspapers that Mr. Griswold had a suit against Mr. Cobban over timber transactions, but I didn't anything about the merits of the case at all: I didn't pay any attention to it. I had no idea, and I know anything about what they wanted me for in Helena, and I asked the marshal about it.

Q. What did he say?

A. He said, "You know as much about it as I do." He said, "All that I know about it is that I have got a summons here for you." Of course, I remember that; I remember the marshal saying that.

Q. And when they found out you didn't know anything about the matter you were discharged and went home? A. Yes, sir, I was discharged.

Q. Have you seen Mr. Griswold since you were discharged?

A. No, I don't think I have. I have never seen him since—not since I met him in Helena at that time.

Q. How long had it been previous to your going to Helena that you had seen Mr. Griswold?

A. I think the last time I had seen Mr. Griswold before I went to Helena was probably—I couldn't say positively, but I think it was in the spring of the year, along in the early part of May or the latter part of April; he had just got out of the case, just a short time

(Testimony of C. C. Willis.)

before. He was going around the town, when I saw him and was talking with him.

Q. The matter that you referred to in the Bitterroot, was the Bean matter, wasn't it?

A. I think that was the matter, yes, sir.

Redirect Examination.

Q. You bought a timber claim from a man by the name of Bean, didn't you?

A. No, I didn't buy a timber claim from him.

Q. What reference did you make in your testimony to a timber claim, Mr. Willis?

A. I didn't make any. He asked me with reference to the timber claim that I bought, and I stated—he asked me when I first spoke about this case? The first time it occurred to me was in a conversation that I had with Mr. Griswold, and I told him the first I had paid any attention to it was when I read the testimony of this Mr. Bean, that Mr. Griswold had tried to blackmail the Blackfoot Milling Company.

Q. Now, Mr. Willis, speaking about the source from which these parties who were taking up timber claims in the year 1899, got the money with which to prove up, has your acquaintance in that country extended, Mr. Willis, to an acquaintance with persons borrowing money with which to make final proof on homesteads or other claims, to take them up under the laws of the United States?

By Mr. MAYNARD.—We object to that because it

(Testimony of C. C. Willis.)

clearly appears from the testimony of the witness that he doesn't know anything about that; and further, that it is not proper redirect examination, and he testified that he only had a little business with the land officers, and therefore he would not know what the rule was with reference to obtaining money to prove up on claims.

A. Well, that would be my answer, that I hadn't any experience, or not enough so that I could say whether it was a common thing or not.

Q. Now, you told us, Mr. Willis, concerning what Griswold had said to you down at Helena, during the taking of the testimony by the grand jury as to what he expected to get out of the transaction. I wish you would tell what he said, if anything, as to what he was then expecting to get, or as to what he was actually getting.

A. When he was at Helena do you mean?

Q. Yes, sir.

A. Well, I asked him where he expected to get off on this proposition. I said to him, that if he sent Mr. Cobban to the penitentiary, I didn't see how he could keep out of it, and a man that done that was—would get the worst of it and lose everything, and he said, he was promised a good position from the government if he made this case stand, and that he didn't care anything about the timber trespassing business.

Q. What I wanted to know was, what, if anything, he said about any money that he was then getting, nor as to what he expected to get.

(Testimony of C. C. Willis.)

A. Well, I went to his room. He had a room in the Weinstein block. Well, it was the best room in the house, and I told him that was pretty extravagant on a dollar and a half a day, and he says, "I am getting more than that for these services." I told him that was all I got, and he said he was getting more than that for his services. I don't know whether he said it was a salary, or what it was or anything of the kind.

STIPULATION.

It is stipulated and agreed between the parties herein, that the testimony may be read over by the Examiner, and corrected by him, and when so read and corrected, it shall have the same force and effect as if it was read, corrected, signed and sworn to by the witness.

I hereby certify that the foregoing testimony of the witness, C. C. Willis, has been correctly transcribed.

HENRY N. BLAKE,
Examiner in Chancery.

I. G. DENNY, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

Q. Your full name is I. G. Denny, is it?

A. Yes, sir.

Q. I will ask you what your business is, Mr. Denny?

A. My profession is that of a lawyer.

Q. Were you practicing law in the county of Missoula, in this state, in the year 1899? A. I was, yes, sir.

(Testimony of I. G. Denny.)

Q. I will ask you to state how long you have practiced law in Missoula?

A. I practiced law in Missoula county about twelve years.

Q. Did you occupy any official position in the county of Missoula during the twelve years?

A. Yes, sir, during those twelve years I occupied the position of public prosecutor for two terms, four years.

Q. During what years did you occupy that position, Mr. Denny?

A. From 1890 to 1892, I think it was, and from 1899 to 1900—1901.

Q. You were in the general practice of the law, were you there? A. Yes, sir.

Q. I will ask you if you are acquainted with one M. R. Stairs?

A. I have had some acquaintance with him, yes, sir.

Q. How long have you known M. R. Stairs?

A. About ten years.

Q. He is commonly called Mel Stairs, isn't he?

A. Mel Stairs, yes, sir.

Q. Are you acquainted with the reputation of Mel Stairs, for truth and veracity? A. Yes, sir.

Q. Is it good or bad? A. It is bad.

Q. I will ask you to state if you are acquainted with one, Len Wells?

A. Well, I knew Mr. Wells, yes, sir.

Q. His initials, I believe, are L. A. Wells

A. Yes, sir.

(Testimony of I. G. Denny.)

Q. He is commonly called Del Wells, I believe.

A. Yes, sir.

Q. How long have you known him, Mr. Denny?

A. Well, I have known Wells, I think for about six years. I am not so intimately acquainted with Wells, though.

Q. Well, you are acquainted with the reputation of L. A. Wells for truth, honesty and integrity in the neighborhood in which he lives?

A. Yes, I am acquainted with his reputation, but not as well as the other man.

Q. Well, is it good or bad?

By Mr. MAYARD.—We object to the question on the ground that it is irrelevant and immaterial, and the witness has not stated that he is familiar enough with the reputation of the party named to express an opinion upon it.

A. I know his reputation, but I wasn't as well acquainted with it as I was with the other man.

Q. Was it good or bad?

A. It is not good.

By Mr. BICKFORD.—That is all.

By Mr. MAYNARD.—I do not care to cross-examine the witness.

I. G. DENNY.

Subscribed and sworn to before me this 8th day of May, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Wednesday, May 7th, 1902, two o'clock P. M.

Hearing resumed pursuant to adjournment.

By agreement of the parties the witness S. C. F. Cobban, was put upon the stand before the examination of R. M. Cobban was closed.

S. C. F. COBBAN, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. Will you give your full name to the stenographer, please, Mr. Cobban? A. S. C. F. Cobban.

Q. Where do you live, Mr. Cobban?

A. I live at Chippewa Falls, Wisconsin.

Q. You are acquainted with R. M. Cobban, are you?

A. Yes, sir.

Q. The gentleman who is sitting by my side now?

A. Yes, sir.

Q. How long have you known him?

A. Oh, for over thirty years.

Q. You are related to him, are you not, in some way? A. Yes, sir, I am his uncle.

Q. I will ask you to state if you know anything about some transactions in the year 1899, with Mr. R. M. Cobban, with reference to timber and timber lands in Montana?

A. I knew that he was locating timber lands.

Q. In what way was he locating?

(Testimony of S. C. F. Cobban.)

A. He was locating them with scrip.

Q. What kind of scrip was that, Mr. Cobban?

A. I think that was called Forest Reserve Scrip.

Q. I will ask you to state if you had any interest with him in such location?

A. Yes, sir, he located some land for me.

Q. How much did he so locate for you?

A. Four sections.

Q. Where were those located?

A. Located on the Blackfoot river, or in the vicinity of the Blackfoot river.

Q. Where, in what State? A. In Montana.

Q. How long did you retain an interest in those lands so located, Mr. Cobban?

A. I think about eight months.

Q. What did you do with them at that time?

A. I sold them to R. M. Cobban.

Q. Did you ever make a timber and stone entry yourself, Mr. Cobban? A. I did.

Q. Whereabouts did you take that?

A. That was also on the Blackfoot river, in Montana.

Q. When was it that you did that?

A. I think it was in September, 1899; I wouldn't say positively.

Q. How many acres, about, did you enter under the Stone and Timber Act?

A. About 160 acres, I think.

(Testimony of S. C. F. Cobban.)

Q. In what land office was the entry made, Mr. Cobban? A. In the land office at Missoula.

Q. Did you ultimately make final proof upon that claim? A. I did.

Q. What did you do with the claim that you located?

A. I afterwards sold that to R. M. Cobban.

Q. At what time was it that you sold it, with reference to the time of your making final proof?

A. I think I proved up on it in November, and I think that I sold it in March. To my recollection it was in March.

Q. There was no contract or agreement, by the terms of which you were to sell this land to R. M. Cobban, prior to the time of making final proof?

By Mr. MAYNARD.—I object to that question upon the ground that it is leading. Mr. Cobban is not named in the bill of complaint in this case, and therefore I object to the testimony of Mr. Cobban on this subject, as being immaterial and irrelevant.

By Mr. BICKFORD.—I will state for the purpose of placing the matter squarely before the Court, that the evidence of Mr. Cobban in this regard is only introduced because the testimony offered on behalf of the complainant in this case has been, some of it, concerning entries as to which there was no agreement.

By the EXAMINER.—You can answer the question, Mr. Cobban.

(Testimony of S. C. F. Cobban.)

A. There was not.

Q. Did you ever have any such agreement with anybody? A. No, sir.

Q. I will ask you now to state whether you know of any other options held by R. M. Cobban during the summer of 1899 upon timber lands in the Blackfoot river?

By Mr. MAYNARD.—I object to that question as being immaterial and irrelevant, and as not tending to prove any allegations in the answer of the defendant, or to disprove any of the averments in the bill of complaint in this case.

By the EXAMINER.—You may answer the question.

A. I do not.

Q. Calling your attention especially to a gentleman living in Chippewa Falls, I will ask you what, if anything, you know concerning any person in Chippewa Falls having given an option to R. M. Cobban, with reference to timber lands in the Blackfoot country?

A. I know there was a man by the name of Andrew Hansen, who gave an option to Mr. Cobban on some land on the Blackfoot river.

Q. When was that?

A. That was in the year 1899.

Q. In the year 1899?

By Mr. MAYNARD.—I object to all this line of questions, for the reason that it is irrelevant and immaterial and does not tend to prove any of the allegations

(Testimony of S. C. F. Cobban.)

contained in the defendant's answer, or to disprove any of the allegations in the bill of complaint herein.

A. Yes, sir.

Q. Are those the only contracts that you know of that were held by R. M. Cobban in the summer of 1899?

A. Yes, that is all that I know of.

Q. Oh, yes, there is one other question. Who located you upon this timber claim that you speak of as having located under the Stone and Timber Act?

A. There was a man by the name of Jemison, located me.

Q. Who did you say?

A. Jemison; I don't know what his given name is.

Q. Did you have any arrangement with anybody to locate you upon this claim?

A. Well, I had an arrangement with R. M. Cobban that he was to have a claim looked up for me, and I was to come out and take it up.

Q. What, if anything, did you pay Mr. R. M. Cobban for that?

A. Well, I paid Mr. Jemison; or rather, I paid Mr. R. M. Cobban and he paid Mr. Jemison.

Q. Oh, you paid him something for doing the work?

A. Yes, sir, I did.

Q. This claim that you speak of was located under the Stone and Timber Act, was it? A. Yes, sir.

(Testimony of S. C. F. Cobban.)

Cross-examination.

(By Mr. MAYNARD.)

Q. You say that you live at Chippewa Falls, Wisconsin? A. Yes, sir.

Q. Are you living there now?

A. Yes, sir, when I am at home.

Q. How long have you been out here this time, Mr. Cobban?

A. I left home on the 25th day of April.

Q. I didn't understand as to the first part of your testimony. Did you say you bought some of these lands?

A. I got R. M. Cobban to locate four sections, with scrip for me.

Q. To locate four sections? A. Yes, sir.

Q. Were you in Wisconsin at the time?

A. Well, I couldn't tell you whether I was in Wisconsin at the time he located them or not; I was here when I made arrangements for him to locate me, and I gave him the money to pay for the scrip.

Q. Well, how much did you give him to pay for the scrip?

A. Well, I don't know; I have the contracts in my pocket. I can tell if I can refer to them.

Q. Well, I would like to see them.

A. (Witness produces contracts and refers to them.) Well, it is provided in the first contract that he was to furnish the scrip at not to exceed five dollars

(Testimony of S. C. F. Cobban.)

per acre, and under the other contract I gave him five thousand dollars with which he was to locate me two sections of land, under Forest Reserve Lieu Land Scrip.

Q. How much money did you advance him altogether?

A. In the neighborhood of ten thousand dollars, I think. I don't think it states in this first contract. I didn't read it over. I see that it states that it isn't to exceed five dollars an acre. Whether it was less than that or not, I don't remember. I don't think it states the amount only that it was not to exceed five dollars per acre.

Q. Will you let me see that, please? (Counsel refers to contract mentioned by witness.)

A. Yes, sir, you can see both of them. (Witness hands counsel contracts named.)

Q. These are the original agreements that were made between you and R. M. Cobban, are they?

A. Yes, sir.

By Mr. MAYNARD.—We will now offer these contracts in evidence, and ask that they be copied into the record as a part of the cross-examination of the witness, S. C. F. Cobban.

(Said contracts are as follows:)

"This agreement, made and entered into this 24th day of July, 1899, by and between S. C. F. Cobban, of Chippewa Falls, Wisconsin, party of the first part, and R.

(Testimony of S. C. F. Cobban.)

M. Cobban, of Missoula, Montana, party of the second part—

Witnesseth: That the said parties have this day entered into an agreement for the purchase of Government surveyed or unsurveyed lands by means of placing lieu scrip thereon.

That the said first party agrees to furnish the capital for the purchase of at least two sections of land, provided, that the scrip therefor shall not exceed the sum of five dollars per acre in cost. And to be purchased by the said second party at the lowest figure obtainable.

Said second party agrees to look up and locate the said lands in the name of the said first party making all conveyances in his name only. Where possible, second party is to make the location of lands without expense to said first party, but, when the lands so located shall have been found by C. L. Griswold it is understood that five cents on each one thousand feet of timber on such selection will have to be paid to the said Griswold for his services and said amount to be furnished by the said first party hereto.

Said first party agrees that when sale is made of said timber that he will pay to the said second party, out of the proceeds of said sale, one-half of the net profits arising from such transaction, after first paying himself the principal sums advanced for the purchase of scrip; for commission and locating the land to the said

(Testimony of S. C. F. Cobban.)

Griswold, for the necessary estimates of timber, for taxes and all other legitimate expenses and sums expended by him for the protection of the said lands and timber, together with interest at the rate of 10 per cent per annum on all sums advanced.

And the said second party agrees to and with the said first party that he will use his best endeavor to secure good and available timber to protect the interests of both parties hereto in every way possible and to assist in the care and sale of said lands. It is understood and agreed that all moneys received from the sale of said land will go to the first party hereto and final settlement shall not be made until said first party has received payment in full of all moneys advanced and the interest as heretobefore stated.

It is understood and agreed that the second party hereto shall pay his own personal expenses in looking up and handling said lands and that all other necessary expenses connected thereto shall be borne by the party of the first part.

In witness whereof, the parties hereunto have set their hand and seal the day and year first above written.

S. C. F. COBBAN. [Seal.]
R. M. COBBAN. [Seal.]

"This agreement, made the 3d day of August, A. D. 1899, between S. C. F. Cobban of Chippewa County, Wisconsin, and R. M. Cobban of Missoula County, Mon-

(Testimony of S. C. F. Cobban.)

tana, Witnesseth: The said S. C. F. Cobban has furnished said R. M. Cobban five thousand ($5,000) dollars, to be used by him in buying two sections of Forest Reserve Lieu Land Scrip, and said R. M. Cobban is to place and locate the same to the best advantage, placing said scrip upon Government timber lands, to the amount of two sections as aforesaid, deeds for said lands, as located, are to be made to said S. C. F. Cobban, and said R. M. Cobban is to furnish him estimates of the timber thereon as located. In addition to the above $5,000, said S. C. F. Cobban is to advance money to pay taxes upon lands located under this agreement, and also for expense of any necessary subsequent estimate, or estimates of the timber upon any of said lands, ordered made by him. The profits upon sale of said lands, after allowing all advances made by said S. C. F. Cobban, together with interest thereon at 10 per cent per annum are to be divided equally between the parties to this agreement, their heirs or assigns. Witness the hands of said parties, to this agreement made in duplicate, the day and year above written.

R. M. COBBAN.

S. C. F. COBBAN."

Q. And you say that under these two contracts you furnished five thousand dollars?

A. I furnished five thousand under one, and I don't know the amount I furnished under the other contract.

Q. Well, have you any recollection of furnishing any more than the sum of five thousand dollars?

(Testimony of S. C. F. Cobban.)

A. Yes, I furnished—these contracts are of two different dates, are they not?

Q. Yes, sir, they are.

A. I furnished the money for the first contract, under the first one it was not to exceed five dollars per acre for two sections.

Q. And you don't know how much that was?

A. No, I don't remember how much it was; we got the scrip from the First National Bank of Missoula, and I think I paid for it right there.

Q. How did you pay for it, in currency or by a draft?

A. I think I paid for it with a check on the First National Bank of Butte; in fact I am quite sure I did.

Q. Have you got that check now?

A. No, sir, I have not.

Q. And you don't know how much it was?

A. No, I might refer to my bank book and tell you about what it was, if you will give me the date of the contract.

Q. The date of the first contract is the 24th of July, 1899.

A. Well, I couldn't tell. (Witness refers to his bank-book.) Out here they charge up the checks differently; they charge them altogether; they do not keep them separate, as they do at home. It seems to be charged up in bulk here, so that I couldn't tell you the amount of that check.

Q. What did you say the date of the contract was?

A. The 24th of July, 1899.

(Testimony of S. C. F. Cobban.)

Q. Yes, the 24th of July, 1899; that is the date of the first contract.

A. Well, that check probably came in August.

Q. What is that?

A. It probably came in later. No, I may not have paid them in a check; I may have given them a Chicago draft or paid them in currency, because it was in July. The amount charged up to me in July by the bank was $3,384.01, but I don't know whether—I am not quite sure of the second contract. I remember something about paying the money on it, in Butte; that is my recollection about it. What is the date of the second contract?

Q. The third of August. Do you find it now?

A. No, I do not.

Q. Well, have you any present recollection as to the amount you advanced or paid for this later on?

A. I have not, for the first land, but if kind of seems to me that the scrip was $4.50 an acre, but I wouldn't swear positively what it was. I remember that we got it at the bank in Missoula, and I remember of the cashier of the bank coming over to R. M. Cobban's office and telling me what he would negotiate the scrip for.

Q. And is that the only transaction you had with Mr. Cobban—of money advanced by you during that season?

A. I don't know. I had a great deal to do with him in the way of loans.

Q. Well, have you any knowledge of any other deals?

A. I have not, no.

(Testimony of S. C. F. Cobban.)

Q. Do you know anything about whether or not you paid any money under this clause of the contract, "But when the land so located shall have been found by C. L. Griswold, it is understood that five cents on each one thousand feet of timber will have to be paid to the said Griswold for his services, and said amount to be furnished by the said first party hereto," referring to yourself. Have you any knowledge as to whether or not you paid any money to Mr. Griswold?

A. I don't think I paid out any money to Mr. Griswold; I think I paid it to Mr. Cobban under the contract.

Q. Do you remember how much that was?

A. No, I don't remember.

Q. You had no acquaintance with Mr. Griswold?

A. I have known Mr. Griswold for the last—probably twenty years, more or less.

Q. You have? Did you meet him during the summer or winter that you were out here?

A. Yes, sir.

Q. Did you meet him during the summer of 1889?

A. I don't think I did; I don't remember about meeting him; I am pretty sure I didn't meet him that summer.

Q. How long were you out there at that time?

A. I don't know; I am not sure; I don't think I was here more than two or three weeks.

Q. You say you had received a letter from your nephew to the effect that he had selected a timber claim for you?

(Testimony of S. C. F. Cobban.)

A. I either received a letter or a telegram, I don't remember which; I think it was a telegram.

Q. And in response to that telegram that you received from your nephew, you came from your home at Chippewa Falls, Wisconsin, out here to Montana?

A. Yes, sir.

Q. You say you were located by Albert Jemison?

A. I don't know what his given name was; I know his name was Jemison.

Q. Who was with you on that trip?

A. Mr. Jemison and R. M. Cobban, and a man by the name of Hardy, I think, and his wife.

Q. What is that?

A. A man by the name of Hardy and his wife; I think that was all.

Q. What was that?

A. I think that is all that was with me.

Q. Had you ever been up in the Blackfoot country before? A. No, sir.

Q. And you say that you subsequently sold this entry to Mr. R. M. Cobban?

A. Yes, sir; might have been deeded to Mr. Clark; I don't remember as to who it was deeded to, but the bargain was made with Mr. R. M. Cobban.

Q. Did you know who this Mr. and Mrs. Hardy were?

A. Yes, sir.

Q. Who are they?

A. I think Mr. Hardy was the father in law and Mrs. Hardy the mother in law of R. M. Cobban.

(Testimony of S. C. F. Cobban.)

Q. Didn't you know it?

A. I never saw him until I met him at that time.

Q. What did you say?

A. I never met him until I met him in Missoula that year at that time when I went out there.

Q. Mr. and Mrs. Hardy with you went up into the woods with Jemison and Cobban, and Mr. and Mrs. Hardy, were in fact the father in law and the mother in law of Mr. R .M. Cobban, and the father and mother of Mrs. Cobban? A. I think so.

Q. Do you know where they lived?

A. No, I don't know where they lived; I know they lived in Massachusetts somewhere, but I didn't know what town they lived in.

Q. Will you please state what you did when you went up there at the time you located on these lands?

A. Yes, I started out in the morning with Jemison, the first day, and journeyed until pretty near night, and came back again to where we left. I was pretty tired, I know that, and I made up my mind that I wouldn't take up a claim at all. I didn't like the country; it was pretty rough and a brushy country, on a pretty small stream, and I made up my mind I wouldn't take up a claim, and that evening when I got in old man Jemison said he knew where there was a claim that I could take; it wasn't very far away, and it wasn't a very good one. I looked it over in the morning, and I concluded to take that, although I thought it was hardly worth taking, but I came for the purpose of see-

(Testimony of S. C. F. Cobban.)

ing the timber and looking over that country, and I thought while I was up there I might as well take up a claim. The reason I didn't take up a claim when I made arrangements about these scrip lands, was because I didn't have time to go out and look over the claims, and when they located a claim for me, I came out and looked over the timber.

Q. Where did this party stop?

A. They stopped at Jemison's house at his ranch.

Q. At the senior Jemison's the old man?

A. Well, I suppose the old man lived there, and a young man lived there, too. There was two of them, I think.

Q. And you say that you went out with Albert Jemison?

A. I went out with Albert Jemison, I suppose; I didn't know what his name was. We started in the morning and I guess I don't know—we got back at ten oclock at night.

Q. And where did Mr. Cobban stop?

A. Well, he went out with Mr. and Mrs. Hardy, and I think he and another man, if I remember right, went with Mr. and Mrs. Hardy in another direction.

Q. And were they up there for the purpose of making locations too? A. I think so.

Q. And the next day you didn't want to go so far, as I understand you, and you took up a location that was near by? A. Yes, sir.

Q. And it wasn't a very good one?

(Testimony of S. C. F. Cobban.)

A. It wasn't a very good one, but I was too tired to hunt for a better one.

Q. Well, did Albert Jemison, assuming that this was the man's name that you were with, assure you that it would do?

By Mr. WALSH.—Wait just a minute, Mr. Cobban. On the contrary, instead of assuming that it was Albert Jemison, he said it was this old Jemison, and that the young Jemison went with Mr. Cobban and with Mr. and Mrs. Hardy. We don't want you to assume that.

A. I mean one of the Jemisons; there was two young men, not the old man, I don't mean him.

Q. Well, that is the way I understood you, Mr. Cobban, that the father or sire of this noble family of Jemisons, he didn't go out in either direction?

A. No, he didn't go out at all, I don't think.

Q. But the older son, whom I am acquainted with, you had the pleasure of his companionship that day?

A. Yes, sir.

Q. And it was this younger son that went with Mr. Cobban and Mr. and Mrs. Hardy?

A. I think so; I don't know, though.

Q. Well, asking you again, were you assured by Mr Albert Jemison, that although you didn't think the selection was as good as the one you were hunting for the day before, that it would do?

By Mr. WALSH.—Wait a moment, Mr. Cobban, you needn't answer that question. It is utterly irrelevant

(Testimony of S. C. F. Cobban.)

and immaterial as to what he was assured by Mr. Jemison.

By Mr. MAYNARD.—Well, we shall insist upon an answer.

A. Well, I was satisfied from the estimates that he gave me of the different descriptions, that it was probably worth taking.

Q. He had the estimates there of the amount of timber that was growing upon this selection that you finally made?

A. Well, I think he had estimated it or some other party, but I remember asking him what there was on it, and how much there was to the quarter section. I asked him what there was on each of the different quarters, to see whether it would average up, and from what he told me, I made up my mind that it would.

Q. And you found that his information was substantially correct?

A. Yes, sir, substantially correct.

Q. And I suppose that Mr. Jemison pointed out the lands to you or Mr. Cobban, did he? A. Yes, sir.

Q. How far was this from the senior Jemison's home?

A. Not over half a mile, I should say. I should think about that.

Q. Mr. Albert Jemison gave you the exact subdivision of the land, did he not? A. Yes, sir.

Q. And where did you stay in the intervening time

(Testimony of S. C. F. Cobban.)

between these visits, of the filing and proving up on the claim? A. I went home again.

Q. Oh, you went home again?

A. Yes, sir, and came back again to prove up.

Q. And you did prove up? A. Yes, sir.

Q. And where was the land office that you proved up in? A. At Missoula.

Q. How long were you in the state previous to your proving up, Mr Cobban?

A. In the state from the time I came up to prove up?

Q. Yes, that is it.

A. I think two or three days; I wouldn't say.

Q. And did you go direct home after you left the Jemisons?

A. Yes, sir, I don't think I stayed there a day in Missoula afterwards. I may have stopped here in Butte a day, but I don't think I did.

Q. And you happen to know where the father and mother of Mrs. R. M. Cobban stayed during the time?

A. I think they were stopping at his place.

Q. You think they stayed in the city during the intervening time?

A. I think so; I wouldn't say whether they stayed with him or not; they had another daughter in Missoula, and they might have stayed with them.

Q. Well, who did you trust the question of looking after the publication of the notice to?

A. I don't know; I might have taken it to the publisher of the paper myself; I don't remember as to that.

(Testimony of S. C. F. Cobban.)

Q. You have no knowledge of that, have you?

A. No, I remember of going there and paying for the notice when I came to prove up.

Q. Who did you—you were a stranger in the city, were you not?

A. Well, I had been in Missoula several times; I was somewhat acquainted.

Q. Who gave you the names of the witnesses?

A. I think that Jemison was a witness for me, and I think that Mr. and Mrs. Hardy were witnesses for me, if I remember right.

Q. And who was the fourth one?

A. It might have been R. M. Cobban; I was thinking there only had to be three, but I don't remember; I know that I proved up according to law; that is, I was supposed to. I answered all the questions that were asked me, and furnished all the witnesses that were necessary, but I think that Mr. and Mrs. Hardy were witnesses, and I think that Mr. Jemison was, and also Mr. R. M. Cobban.

Q. And as to whether Mr. R. M. Cobban attended to the question of the publication of the notice to see whether it was inserted or not, you don't know?

A. No, I think I attended to that myself; I think Mr. Catlin drew it up for me and I took it there myself. I remember going there and paying for it.

Q. Of course you paid your money for this claim?

A. Yes, sir.

(Testimony of S. C. F. Cobban.)

Q. And you say that several months afterwards you conveyed to Mr. Cobban?

A. I sold it to him, but I wouldn't say whether the deed ran to him or to Mr. Clark; I don't remember as to that.

By Mr. BICKFORD.—That can be determined by the deeds themselves. To save the Examiner the trouble, though, I think I can state that there is no such a thing there as a deed from the witness to Mr. Clark.

Q. When did you say that you deeded this land, Mr. Cobban?

A. I couldn't tell you what date, but it seems to me that it was in March, 1900.

Q. What basis have you for that statement?

A. Well, because I remember of him writing to me sometime in the winter, asking me if I would take—what I would take for it, and we wrote back and forth about it.

By Mr. WALSH.—If your Honor please, inasmuch as counsel has the deed referred to in his hand, the witness ought to be shown the deed for the purpose of refreshing his recollection.

By the EXAMINER.—Yes, the witness ought to be shown the deed.

Q. Well, do you remember when you proved up?

A. No, I don't remember positively about that, but I think it was the 5th day of November—after the 5th day of November; I know I left home on the 5th day of

(Testimony of S. C. F. Cobban.)

November to come out here, and I think it was for that purpose.

Q. And then he wrote to you, after you returned to Wisconsin, to see whether you would sell it or not?

A. Well, I think he wrote me and asked me for a price on it, and I gave him a price on it, and then he wrote to me and made me an offer for the scrip land, an offer for both of them together; and he first accepted of my offer on the scrip lands, and said if I would give him an option on the scrip lands he might possibly use that too, and the deal was made, and I thought it was both included in the same deed.

Q. And you were in Wisconsin when you sold the land?

A. Yes, sir, but I came up here when the deed was made and closed up the deal.

Q. What did you say?

A. I came up here and closed up the deal, and at the same time made the deed.

Q. And how much did you get for the land?

A. I don't remember; I know I got out of it just what it cost me, counting my expenses on my two trips.

Q. So that would be four hundred dollars for the price of the land, and two hundred dollars for the expenses of making the trip?

A. I think perhaps it was about that for the expenses for the two trips.

Q. So that would be about six hundred dollars?

(Testimony of S. C. F. Cobban.)

A. Yes, I think it was about six hundred dollars, but I wouldn't be positive.

Q. So it would be about six hundred dollars or thereabouts?

A. About that, I think; I couldn't even tell what I got for the scrip lands.

Q. And you don't know what you received for the scrip lands?

A. No, I do not.

Q. But the whole transaction was closed up in this one deal?

A. Yes, sir; I don't know whether it was all closed up in one day or not, but I think it was; it was at the same time; I think it was all in the same day.

Q. I show the witness Complainant's Exhibit No. 105. I ask you if you recognize that as the deed which you executed? A. The deed which I gave?

Q. Yes, sir.

A. I don't see my signature to it anywhere.

Q. Well, that is a certified copy.

A. Well, I couldn't tell because I probably didn't read it over; I had confidence in R. M. that he would do what was right, and I probably didn't read it over.

Q. Did you frequently do that, sign deeds without reading them over or knowing what was in them?

A. Well, I usually draw my own deeds when I am at home.

Q. I have heard of some loving and devoted wives

(Testimony of S. C. F. Cobban.)

that did that, but I didn't know that an acute business man would do that.

A. Now, let us see if I remember right, it was a quitclaim deed. I don't know whether this is a quitclaim deed or not.

Q. I call your attention to the fact that this deed is dated the 8th of January.

A. I see it is.

Q. You think that this is the proper date, do you?

A. I think likely it is. That might have been dated back to the time when he and I made the agreement to locate the timber.

Q. Well, the certificate of the notary appears on that date.

A. Well, then, that is probably the proper date; but honestly, I couldn't have told what year it was until I looked it up this morning.

Q. Well, Mr. Cobban, now you stated that you got how much over your expenses?

A. I think that I didn't get anything on the timber claim over my expenses; I think I paid in about two hundred dollars for my expenses on the two trips. I think that is about what I paid.

Q. So you threw that in, did you?

A. No, I didn't throw it in; I think I got about six hundred dollars altogether for this claim; I think I paid into the land office about four hundred dollars, and I think I had two hundred dollars for expenses.

(Testimony of S. C. F. Cobban.)

Q. Very well. How much did you clean up on the affair above your expenses?

A. On the timber claim?

Q. Yes, sir.

A. I don't think I cleaned up anything; I didn't calculate that I cleaned up anything on that deal on the timber claim.

Q. Well, was there—why did you make the location?

A. Well, I was out there, and I thought I might as well locate it as not, if I couldn't make much on it. I came out to see the timber, and I saw it, and when I came out to see the timber, I thought I might as well take a claim, and I went out to where the claim was, but when I got back, I was so tired from the trip the day before that I made up my mind I wouldn't look any further. I thought I could make myself whole out of the thing.

Q. Then do I understand that you could make this whole transaction—that you could take this deal, and with what you paid out, you could get even, and that what you was selling to your nephew, he could have the profit out of it?

A. I don't know that there was any profit in it. When I made the scrip land deal, I calculated on the whole thing, but when I found out the way that everything was going, and that most of the timber was controlled by capitalists on that stream, I thought it wouldn't pay me anything. A man with a small

(Testimony of S. C. F. Cobban.)

amount of timber couldn't do very much, and it wouldn't be worth anything.

Q. Well, did you go up with Mrs. Cobban's father and mother?

A. I did when we took up the timber claim.

Q. And came back with them?

A. And came back with them, yes.

Q. And you knew—and you afterwards sold to your nephew? A. Yes, sir.

Q. And did you know that they afterwards sold to your nephew?

A. I don't know whether they did or not.

Q. What is that?

A. I don't know anything about it; I don't know whether they sold it to him or not. From the day that I proved up I never saw them until I saw them there at Missoula, to know anything about it.

Q. Well, how did you go up there?

A. We went up with Mr. Cobban's team to see the timber.

Q. You four? A. Yes, sir.

Q. And drove all the way up? A. Yes, sir.

Q. And all of you went together?

A. Yes, sir.

Q. And came back again? A. Yes, sir.

Q. Now, didn't you know from the conversation that you had with the father and mother, during that whole journey, going and coming, as to the purpose for which they entered those lands?

(Testimony of S. C. F. Cobban.)

A. I didn't know anything about it, sir; it was none of my business.

Q. It was none of your business?

A. No, sir; I knew that they were going up there to locate some claims, but I didn't know to what place.

Q. Nothing was said about it? A. No, sir.

Q. In your presence?

A. Not in my presence, that I know of.

Q. How long did you say you were out here this time?

A. I think I went back again the next day.

Q. And how long had you been here the year before? A. Before I went up there?

Q. Yes, sir.

A. Well, if you could tell me what date I proved up, I could tell you that. At the time I located I didn't know, I don't know how long I was out here. I know that when I proved up I went home; that is, about the day after. I know I left home on the 5th of November, and I think that I went back from here the day after I proved up.

Q. The question was how many days you had been in the State previous to your going up in the Blackfoot country.

A. I think I went right up the next day after I got here.

Q. You went up the next day after you got into the state? A. Yes, sir.

(Testimony of S. C. F. Cobban.)

Q. And stayed there the time that you have testified to? A. Yes, sir.

Q. And immediately after you proved up, the next day, you went back home?

A. I think I got back to R. M. Cobban's place on the Sunday night, and I think I started home on the Monday; that was the time that I located the stone and timber claim.

Q. Now, then, the sole purpose for which you left Wisconsin was for the purpose of coming out here and making this location?

By Mr. BICKFORD.—We object to that question, for the reason the witness has already answered that his purpose in coming out here was to look over the country, and to investigate the timber lands, and that he did so.

By Mr. MAYNARD.—Well, you have a right to put in your objections if you want to.

By the EXAMINER.—He has the right to put in his objections.

A. My purpose in coming out here when I made arrangements was to locate the scrip lands, and I was in a hurry to get back home, and I didn't have time to go out and look at the timber land, and I told him that if he could find me a claim that I could take up under the Stone and Timber Act, that I would take one up, as I wanted to see the timber up there, and I came back here again for the purpose of taking up a claim.

(Testimony of S. C. F. Cobban.)

Q. Well, Mr. Cobban, if that was the purpose, why didn't you stay and look over the timber?

A. Well, I was in a hurry to get back. We did go across the river and look over a large body of timber.

Q. All right. Now, during the time that you were talking with Mr. Cobban, didn't you stay at his house while you were here, the short time that you were here, didn't you stay with your nephew?

A. I think I did, but I wouldn't say that I did. I frequently stopped at the Rankin House.

Q. Didn't you, during your stay and during the conversations you had with Mr. Cobban while you were in Missoula, and while you were with him and his father and mother in law, and going up into the timber to make these locations, have a talk with him, and didn't he say what his purpose was in taking up these timber lands? A. I don't know.

Q. Didn't you know for what purpose he was taking up these lands?

A. I supposed he was looking it up for the purpose of getting some timber, but I don't know anything about that.

Q. Well, your relations have been more or less of an intimate character, have they not?

A. Not with his father or mother. I never saw very much of them.

Q. But with Mr. Cobban? A. Yes, sir.

Q. Now, do I understand you to say that he didn't dis-

(Testimony of S. C. F. Cobban.)

close to you at all his plans and purposes in taking up these lands?

By Mr. BICKFORD.—We object to that because the witness has already answered the question three separate and distinct times to the best of his knowledge.

Q. Mr. Cobban, will you please answer the question?

A. Well, I understood that he was locating parties on the lands, yes.

Q. And for what purpose was Mr. Cobban locating people on lands?

A. Well, I understood him to say that he charged a hundred dollars for locating people on the lands.

Q. Charged a hundred dollars apiece for locating?

A. A hundred dollars a location, yes; that is what I understood.

Q. Well, why was he paying people a hundred dollars for locating them on lands?

A. Why was it? Why was what?

Q. Why was it that the people were charging him a nundred dollars apiece for locating them on the lands? What was your last answer, please?

A. Well, I mean that he was locating people and charging them a hundred dollars for locating them. He was making a business of locating.

Q. That was his business, to locate parties, that applied to him, on lands, and charging them a hundred dollars apiece. You understood that from him, that he was engaged in that business?

(Testimony of S. C. F. Cobban.)

A. Yes, I understood that he was engaged in that business of locating parties.

Q. And making a hundred dollars out of it?

A. Well, I think he charged for his services for looking up lands and locating.

Q. Well, now, what I want to know, Mr. Cobban, is just exactly what your understanding was from the conversation that you had with Mr. Cobban at the time?

A. Well, I didn't have any particular conversation with him. I asked him at the time I made arrangements with him to enter these scrip lands, if he could look me up a claim that I could take up under the Stone and Timber Act, and he said he would. He said he would at that time, when I was there, but I had to go back home, and I told him if he found anything that was suitable that I would come back again. And he let me know that he had a claim, and we went up there with this man Jemison, went up on to the claim, and I made up my mind that I wouldn't take it.

Q. Well, you have testified to that?

A. Yes, and that is all I know about it, the fact that he was in the timber locating people on claims, and I don't suppose he was doing it for fun.

Q. Well, how could he locate people on claims, and who was to pay for the land that he located, whose was it?

A. Well, I suppose the parties that took the land would have to pay for it, of course; for instance, Mr. Jemison

(Testimony of S. C. F. Cobban.)

located me, and I had to pay for the land; I had to pay him for locating me.

Q. You didn't pay Mr. Jemison anything, did you?

A. I paid R. M. Cobban and he paid him. I asked him, Mr. Jemison, if Mr. Cobban had settled with him for his services for me, and he said he had, and I paid Mr. R. M. Cobban for it.

Q. How much did you pay Mr. —

A. I don't remember what I did pay him.

Q. Mr. Jemison didn't charge you anything for his services, did he?

A. Of course he charged for his services; he wouldn't be very likely to go locating me and tramp around through the woods with me for fun.

Q. Why, didn't you know at the time that Mr. Jemison was in the employ of your nephew, and that he was locating you in pursuance of that employment?

A. No, sir, I did not know anything about it.

Q. You didn't know anything about it?

A. I didn't know how that was. I knew he made arrangements with Mr. Jemison to go out with me, but I didn't know that Mr. Jemison was in his employ particularly.

Q. Well, didn't Mr. Jemison inform you of that fact?

A. No, he did not.

Q. Now, do you mean to say that after he got through that Mr. Jemison charged you for his services?

A. Yes; well, I told you I settled with Mr. Jemison for his services for me, and that I would pay him, and I

(Testimony of S. C. F. Cobban.)

settled with R. M. for it, and he told me that he would settle with Mr. Jemison.

Q. Mr. Cobban told you that he had made it all right with Mr. Jemison? A. Yes, sir.

Q. Now, you say you paid Mr. Cobban, but you don't remember how much you paid him?

A. No, sir, I don't remember that.

Q. You don't remember anything about that?

A. No, sir, I don't know how much he paid him.

Q. I read from the record, page 547, of Volume 1, from the testimony of Mr. Jemison. "Cross-examination by Mr. Walsh.

"Q. What do you know about what Elvira M. Hardy understood?

"A. Well, I cannot say.

"Q. Did you ever talk to Elvira M. Hardy about conveying her claim?

"A. No, sir.

"Q. Do you mean to say that she understood she was going to convey her claim?

"A. Well, that was my meaning, yes, sir.

"Q. That was your meaning?

"A. Yes, sir.

"Q. That is, you had the same meaning that all the rest of these parties, that you had with reference to Elvira M. Hardy?

"A. Yes, sir.

"Q. When you say it was understood, you mean it

(Testimony of S. C. F. Cobban.)

was understood that all the rest of them, then, the same as it was with Elvira M. Hardy?

"A. Well, I said I didn't talk with them about that.

"Q. You told me upon cross-examination the other day what you said about it, about each and all of them in this matter?

"A. I don't remember about each one of them. There were some of them that I really had no talk with at all.

"Q. Now, the same understanding, I suppose, was had with John H. Hardy?

"A. Well, I don't just understand.

"Q. I thought very likely you didn't. What I mean by this—

"A. I understood it this way, that if they went and took these claims up and sold to anybody, why that was my idea, that it was their intention when they started in.

"Q. That is what you mean by the understanding, is it?

"A. That those parties were to do so, that is what I said I understood.

"Q. You don't mean to say that you had no talk with John H. Hardy, in the course of which he told you that he was going to convey the land to Mr. Cobban?

"A. No, not with Mr. Hardy.

"Q. Didn't I ask you about each one of these, and didn't you say that the only one you had any talk with was Mr. Hendrix?

(Testimony of S. C. F. Cobban.)

"A. I believe so, yes.

"Q. What have you to say concerning any understanding with Simon F. Cobban, to the effect that he was going to convey. What you spoke of as an understanding, applies as well to Simon F. Cobban as to all the rest of those people."

Now, didn't you know at the time that you were up with Jemison, and didn't he give you to understand, and didn't you talk about it, that you were making this entry solely for the purpose of conveying to R. M. Cobban after you had made final proof?

A. No, sir, I did not; I didn't wish to sell at that time; I intended to hold both the scrip lands and the land taken up under the Stone and Timber Act.

Q. But, as a matter of fact, after you had made your final proof you did convey to Mr. R. M. Cobban, without one cent of profit to yourself?

A. I think on that particular deal I didn't make any profit, because I didn't think it was worth any more than what I had put into it.

Q. And that is, it wasn't worth anything?

A. Well, I think it had upon it five or six hundred thousand feet of timber; I think, perhaps, less than six hundred thousand feet.

Q. But you paid out six hundred dollars just the same, and you got six hundred dollars for the claim altogether, and you were willing to sell it without making any profit on it?

A. I might not have been willing, and I might have

(Testimony of S. C. F. Cobban.)

been willing to have got more out of it, but I came out for the purpose of taking up a claim, and I thought I might as well take it, because I had the scrip lands anyway.

Q. But you say when you left your home at Chippewa Falls, Wisconsin, you came out here to Montana for the purpose of taking up this claim. Will you tell what purpose you had in view in taking it up?

By Mr. WALSH.—We object to this upon the ground that he has already answered this question several times, and it is merely a repetition of the testimony already given by the witness.

A. I expected when I came out here to get a claim.

Q. And that is the best answer that you can give to that question?

A. Yes, sir, as I said before, I came out to get a claim, and I intended to hold it with the scrip lands, to see what would become of it, and see what it would be worth.

Q. And that is your answer? A. Yes, sir.

Redirect Examination.

(By Mr. BICKFORD.)

Q. You stated, I believe, in your cross-examination, that you did not know whether the deed ran from you to R. M. Cobban, or from you to Mr. Clark?

A. I don't remember about that.

Q. Well, now, after you have looked at this exhibit

(Testimony of S. C. F. Cobban.)

marked Complainant's Exhibit No. 105, what have you to say with reference to that?

A. Well, I didn't look at the deed; I didn't pay much attention to it.

Q. I wish you would answer my question now, after looking at the deed? A. What is the question?

(Deed handed to witness by counsel.)

Q. Now, I ask you the question, after having refreshed your recollection by looking at the deed mentioned, which I have handed you, what you have to say as to whom the deed that you gave ran?

A. It ran to R. M. Cobban.

Recross-examination.

(By Mr. MAYNARD.)

Q. Just let me ask you one more question in regard to that. Where did you get the idea in your mind that you might have conveyed this land directly to Senator Clark?

A. Because I understood that he was going to sell a lot of land to him, and that is the reason I thought the deed ran to Mr. Clark.

Q. When did you first find that out?

A. Well, I did not; I don't know that I found it out until I came to close up the deal.

Q. And that was the first information that you had received from Mr. R. M. Cobban, your nephew, that he was taking up these lands and selling them to the defendant in this case? A. Yes, sir.

(Testimony of S. C. F. Cobban.)

Q. At the time you speak of, in January, 1900, I want you to explain now, whether at that time you got any information at all from anybody, that the defendant—that R. M. Cobban was taking up these lands for the defendant in this case, W. A. Clark?

A. I never had heard of any such thing.

S. C. F. COBBAN.

Subscribed and sworn to before me this 9th day of May, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Thursday, July 10th, 1902, 2 P. M.

By consent of parties, the witness, Cobban, was withdrawn and EMERSON B. WEIRICK, a witness for defendant, after being duly sworn in his behalf, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Weirick, where do you live?

A. Butte, Montana.

Q. What is your business there?

A. Cashier of the First National Bank.

Q. How long have you occupied that position?

A. Five and a half years, nearly.

Q. You were such, then, during the year 1899?

A. Yes, sir.

Q. Do you know one R. M. Cobban?

(Testimony of Emerson B. Weirick.)

A. Yes, sir.

Q. How long have you known him?

A. Since coming to Butte; about five years.

Q. Has he been a customer of the First National Bank during that period? A. Yes, sir.

Q. Now, do you recall, Mr. Weirick, any transactions between the bank and Mr. Cobban during the year 1899?

A. Yes, sir.

Q. What was the nature of those transactions?

A. Well, he was a borrower at the bank at that time.

Q. Now, I show you exhibit Nos. 316 to 330, inclusive, excepting exhibit 320, and I wish you would look them over and tell us whether those instruments evidence loans made to Mr. Cobban by the First National Bank or anybody connected with it during that year.

A. All of these exhibits, except Nos. 326 and 327 are loans made by the bank—notes that were given to the bank for borrowed money. The exhibits Nos. 326 and 327 are both made to J. E. Gaylord, for $15,000 each. I do not recall those notes; it is possible that it may have been a personal matter of Mr. Davis'.

Q. Those two transactions you do not recall?

A. No, sir.

Q. Now, Mr. Weirick, what, if anything, did you have to do with the making of these loans?

A. Well, Mr. Davis and I consulted over matters of this sort, and we decided on whether or not we wished to extend the credits asked.

(Testimony of Emerson B. Weirick.)

Q. Who is Mr. Davis?

A. Mr. Davis is president of the First National Bank of Butte.

Q. And who actually has the charge of the work of the bank? A. I have.

Q. Now, at the time that these various loans were made, Mr. Weirick, what inquiry did you make, if any, as to the purpose for which the money was desired and the time it was expected that it would be repaid to you?

A. We asked Mr. Cobban what he was doing with the money, and he told us that he was acquiring timber lands in the western part of the State.

Q. What did he say as to the purpose for which he desired to get the money?

A. He borrowed the money for the purpose of acquiring title to the lands, which he expected to dispose of at a profit.

Q. What, if anything, did he say at that time as to what disposition he intended to make of these lands?

A. Well, he said that he had a number of parties figuring on the purchase of the lands after title was acquired and I asked him—I don't know whether I asked him, but he volunteered the information that he was dealing with two or three or four people. He said that he had presented the matter to the Carroll Lumber Company of Butte, that he had some parties in Wisconsin with whom he was corresponding with the idea of disposing of them to them; he also mentioned the possibil-

(Testimony of Emerson B. Weirick.)

ity of selling to Mr. Daly or the Blackfoot people, and Mr. Clark.

Q. What, if anything, did he say to you about that time to the effect that he was acquiring these lands for Senator Clark?

A. We never heard anything of that kind; no statement of that kind was ever made to me.

Q. And whose money was this, Mr. Weirick, that was advanced to Mr. Cobban on the notes to which you had referred in your testimony?

A. It was the funds of the First National Bank of Butte.

Q. You were not acting as the agent, then, of Mr. Clark in giving Mr. Cobban this money?

A. No, sir, in no way at all.

Q. Had Mr. Cobban ever borrowed any money from the bank prior to this time? A. Yes, sir.

Q. During what period had he been a borrower at the bank?

A. My impression is that he has been a borrower for quite a number of years; I know he was for a number of years before I went to Butte and was made cashier of the First National Bank.

Q. And how during that period and down to the time that these transactions took place?

A. He was always a borrower.

Q. Now, what personal credit did Mr. Cobban have at your bank at that time, aside from the particular enterprise for which he desired this money.

(Testimony of Emerson B. Weirick.)

A. Well, Mr. Cobban, we felt, was always reasonable in his requests at the bank, and the officers never hesitated to give him what he reasonably asked for; we have always let him have what his needs appeared to demand. I don't believe that Mr. Cobban was ever refused any of his requests—not that I now recall—since I have been connected with the bank; as I say, his requests we always considered reasonable.

Cross-examination.

(By Mr. MAYNARD.)

Q. How much is the aggregate of the loans represented by those notes?

A. Well, I could not tell that without referring to our books at the bank. Some of these are renewals of others.

Q. Just what proportion are renewals you are unable to state?

A. Yes, sir; I would not be in a position to state which are renewals or what the aggregate amount of the loans were without referring to our books over there.

Q. So that that accumulation of notes there furnishes little or no exact information as to the amount that you loaned him at that time?

A. No, sir. We loaned him money several times during his transactions in timber lands, and my recollection is that quite a number of the loans were paid up, and credit extended again; that is, he disposed of some

(Testimony of Emerson B. Weirick.)

timber lands and made payments—retired some of his paper with the proceeds of the sale—and then we extended him additional credit again as his wants required.

Q. I am not asking you generally now; I am asking you your recollection with reference to the exhibits in this case which are now before you. I want to know if you are able to tell from those exhibits the amount that you loaned to Mr. Cobban? A. No, sir.

Q. So that, as a matter of fact, the amount that you loaned might have been one-quarter of the amount to which those notes add up?

A. I cannot say what proportion it might be of the aggregate of them.

Q. All dependent on how many are renewals?

A. Yes, sir.

Q. Have you the data in the bank to tell?

A. Yes, sir.

Q. How could you tell by any of your books?

A. Well, the discount ledger should show the amount that he borrowed.

Q. If it was paid by the giving of a new note, would that fact be indicated by the register?

A. Well, not exactly; they would be marked off very similar to the notes themselves. It would be hard to determine the exact amount that we loaned Mr. Cobban for that reason.

Q. Payment by a new note is the same, as far as your books appear, as if it was payment by cash, is it not?

(Testimony of Emerson B. Weirick.)

A. Well, yes; the new note is just entered up and the old note marked canceled on the register.

Q. So that those exhibits would be entirely misleading as to the amount that you actually loaned to Mr. Cobban at that time?

A. Well, the notes represent more money than we loaned to Mr. Cobban at any one time.

Q. Can you state from your own knowledge, outside of the exhibits, as to the amount of credit which at any one time was extended to Mr. Cobban during this period?

A. I should judge—and of course, I do not want to make this statement as positive for the reason that I am not in a position to say, as I said before—but he was usually entitled to a credit of from $30,000 to $40,000. I think, of course, that we loaned Mr. Cobban a good deal more than that amount of money, but as I said before, part of it was paid and then loaned again.

Q. Very well. Assuming that your officers had determined that Mr. Cobban was entitled to a credit of $40,000, the outside figures that you have named, do I understand that that was a loan on his own personal note? A. Yes, sir.

Q. With no endorser?

A. No endorser except such as are on the notes there; we had no security other than what is represented by the signatures to the notes, as far as the bank paper is concerned.

(Testimony of Emerson B. Weirick.)

Q. Well, on a number of those notes there is no endorser at all, is there?

A. On what are signed by Mr. Cobban personally, we had no other security than his own signature.

Q. Did you have any collateral? A. No, sir.

Q. Was this credit which you gave Mr. Cobban based upon the property which he owned at that time?

A. It was based upon the property that he was acquiring and on his own personal integrity.

Q. His own personal integrity and the property he was acquiring?

A. And the property that he was acquiring. We, of course, know that he was the owner of considerable real estate in Butte and also in Missoula, which was considered in the transaction.

Q. Did you, yourself, make any personal investigation of the holdings that Mr. Cobban had at that time?

A. I did not.

Q. Did you have any knowledge on the subject?

A. Only his statements.

Q. And from the statements that he made, you based the credit upon his good name and his credit on the property that he was to acquire rather than on any that he did have at the time, did you not?

A. The property that he was acquiring and the property that he had.

Q. What property did he have at the time?

A. He had considerable.

Q. Can you name any? A. Yes, sir.

(Testimony of Emerson B. Weirick.)

Q. Well, name some.

A. Well, I cannot name these by lots; I cannot give you full descriptions of them because I have no means of knowing that. My recollection at the time that he was borrowing this money was that he had, I should say, twenty-five or thirty pieces of property in Butte, and he owned considerable property in Missoula in addition.

Q. But you cannot name them.

A. No, sir, I could not give you a description.

Q. And you made no personal examination of the record to find out how much they were encumbered?

A. No, sir.

Q. You don't know whether or not they were encumbered? A. We did know.

Q. What was the representation made to you at the time by Mr. Cobban as to whether they were or were not?

A. He made no representation to us at all; that was left to our own means of finding out.

Q. And you made no investigation?

A. Yes, we did.

Q. What was the result of that investigation?

A. It was not necessary for us to make an investigation. Mr. Davis was fully acquainted with Mr. Cobban's affairs, and no property was encumbered without Mr. Davis' knowledge, and he had the records open before him at the courthouse and could investigate when-

(Testimony of Emerson B. Weirick.)

ever he saw fit, and this credit was based upon his knowledge of Mr. Cobban's financial condition.

Q. Mr. Weirick, I was not asking you what Mr. Davis knew; I was asking you what you knew, as to whether you knew at the time that Mr. Cobban's real estate was all mortgaged or not.

A. We knew that it was not.

Q. Not mortgaged?

A. Not all mortgaged, yes, sir.

Q. How did you know that?

A. We could go to the records.

Q. Did you go yourself? A. I did not.

Q. So you had no knowledge yourself of Mr. Cobban's financial situation except as Mr. Davis told you.

A. No. I knew in a general way what Mr. Cobban's financial condition was.

Q. In a general way? A. Yes, sir.

Q. But you had no specific knowledge?

A. Mr. Davis and I talked over these matters, and Mr. Davis being president of the bank and having full knowledge of Mr. Cobban's affairs—he would recommend or decline loans that were presented to the bank, and he recommended these loans that Mr. Cobban asked for, and of course he would not have loaned the money unless he was satisfied that Mr. Cobban had some personal holdings to justify the credit.

Q. Those are conclusions of yours, and the fact is that Mr. Davis, as president of the bank, owns a majority of the stock of the bank, doesn't he?

(Testimony of Emerson B. Weirick.)

A. Yes, sir.

Q. And his recommendation goes?

A. Yes, sir.

Q. So it was utterly immaterial whether you knew anything about it or not?

A. It was utterly immaterial as far as Mr. Davis desiring to make the loan is concerned, yes, sir. If I had had any knowledge regarding Mr. Cobban's condition that would not have justified the credit, it would be my business to so state it to Mr. Davis, and we would consult as to whether or not the loan was a satisfactory one and whether it was advisable to make it.

Q. But you had no knowledge?

A. We had a knowledge.

Q. I am not talking about "we." "You." You had no knowledge? A. I had no knowledge—

Q. You had no knowledge—

A. Let me finish. I have part of the time here.

Q. You seem to want to take it all.

A. Some others want to take it all.

Mr. WALSH.—Let the witness answer.

The EXAMINER.—Let the witness answer.

The WITNESS.—Mr. Davis and I consulted over these matters, and if I had any knowledge of any person who was applying for a loan that would not justify us in making the loan, of course, it was my business to state it. The same with Mr. Davis, and with our combined

(Testimony of Emerson B. Weirick.)

knowledge of Mr. Cobban's affairs, these loans were recommended and made.

Q. Well, you had no personal knowledge yourself from any personal investigation that you had made, had you? A. Of Mr. Cobban's affairs?

Q. Yes.

A. I knew his general standing.

Q. I mean outside of his general reputation?

A. I knew that he owned quite a considerable amount of property in Butte and in Missoula that was unencumbered.

Q. Well, name the property.

A. I cannot describe the property. It is ridiculous to ask such a question as that.

Q. You are not the judge of that.

A. I am one side of it.

Q. Very well. You might have known, if he had a block in Butte ,might you not, if it was unencumbered or not, and if you know of a block, couldn't you answer?

A. I would know if I owned it.

Q. Would it be ridiculous to state, if you knew of a block that he owned if it was unencumbered?

A. It would not be if I owned the block, but if some other man owned it, it might be.

Q. When he was asking for a loan?

A. Mr. Cobban owned a great many pieces of property in Butte.

Q. Can you name one particular description of prop-

(Testimony of Emerson B. Weirick.)

erty in Butte that Mr. Cobban owned that was unencumbered?

A. No, I could not give a description of the lots and blocks.

Q. Well, name any one particular piece of property in the city of Missoula that Mr. Cobban owned at the times that was unencumbered.

Mr. BICKFORD.—We object to that question on the ground that it has been answered two or three times.

A. Yes, sir.

Q. Well, name it.

A. He owned his residence there, which was unencumbered at that time.

Q. How do you know that?

A. By his statement.

Q. And other source of information?

A. No, sir.

Q. So you did ask him that particular question.

A. I don't know that I asked him that question; we had that knowledge.

Q. From whom did you get that knowledge?

A. From Mr. Cobban.

Q. So he volunteered it? A. Perhaps.

Q. Can you name any other piece of property?

A. No, sir.

Q. Do you know how much his home in Missoula was worth?

A. Well, I judge it was worth $10,000 or $15,000.

Q. Did you ever see it? A. No, sir.

(Testimony of Emerson B. Weirick.)

Q. What knowledge have you on the subject?

A. My knowledge came from Mr. Cobban.

Q. Did he tell you that it was worth $10,000 or $15,000? A. Yes, sir.

Q. He told you that it was worth $10,000 or $15,000 and that it was unencumbered? A. Yes, sir.

Q. Can you name any other piece of real estate?

A. I do not recall any other now.

Q. You don't recall any other, and you know of none?

A. I don't recall any other.

Q. Can you name any piece of real estate in the city of Butte that Mr. Cobban owned at the time, whether they were encumbered or unencumbered?

A. No, I can't describe any.

Q. Can you name any that he owned in Missoula except this house? A. No, sir.

Q. Now, then, you loaned this money on the strength of the representation that was made by him to you, in part at least, that he was going to sell this real estate that he was acquiring in the western part of the state?

A. Yes, sir.

Q. And the defendant, Clark, in this case was one of the parties named?

A. Yes, sir, I believe Mr. Clark was named as a possible purchaser.

Q. Were there any of them named other than as possible purchasers? A. No, sir, not that I recall.

Q. So that this loan of money that you made to Mr. Cobban was on the strength of a possible sale?

(Testimony of Emerson B. Weirick.)

Q. What did he say to you as to what the possibilities were?

A. He said the probabilities were very, very good.

Q. How long did he tell you that he expected to be obliged to hold the land after he had acquired title to it before he could realize on it?

A. I don't recollect that he stated any time.

Q. But the prospects of realizing on it by the sale of the land were very, very good? A. Yes, sir.

Q. And that is all that you knew about what he was to do with the land?

A. Yes, sir, that is all that we knew anything about what he expected to do, except to sell it; that was the statement he made to us.

Q. Did you ever have any conversation with him afterwards in regard to the chances of his selling the land?

A. We talked about it frequently. We, of course, were interested in seeing him dispose of the land as quickly as possible, and we quite often discussed the matter, and how matters were progressing, and he always gave us assurances that he would within a reasonable time, he thought, be able to make a turn.

Q. Did the question come up on the application to renew the loan?

A. Why, I presume likely we discussed it right along as the notes were renewed or additional money asked for. He kept us, we thought, very well advised as to

(Testimony of Emerson B. Weirick.)

what progress he was making in the deal and prospective sales.

Q. Did he ever mention Mr. Clark's name?

A. He did, sir.

Q. When?

A. Well, I can't just recall the date; he mentioned him among the other possible purchasers.

Q. I mean after that? A. Oh, yes.

Q. You have referred to that already.

A. Yes. I know that he made some sales to Mr. Clark.

Q. How do you know that?

A. By his statement to us.

Q. Did you ever have any conversation with Senator Clark?

A. I did not; I am not acquainted with the gentleman.

Q. Well, or with Mr. Wethey?

A. I had a conversation with Mr. Wethey after the sale was made.

Q. After what sale was made?

A. After the lands were disposed of.

Q. Can you fix it any more closely than that?

A. No, I cannot give any definite time when it was.

Q. Can you tell the date of the first loan there, the first exhibit?

A. The only way I could tell would be the date of the first note.

Q. Very well. What is that, please?

(Testimony of Emerson B. Weirick.)

A. Well, the first note here is dated April 5th, 1899.

Q. How much for?

A. Two thousand eight hundred and twelve dollars and fifty-three cents.

Q. What was the one next after that?

A. The next is dated June 23d, 1899, $3,175.14.

Q. And the next one please.

A. The next is July 6th, 1899, for $1500.

Q. Very well. Now, with reference to those three dates that you have named, state as near as you can the conversation that you had with Mr. Wethey—

A. Well, my conversation with Mr. Wethey was, I should say, two years later than that.

Q. Two years later?

A. Yes, sir. My conversation with Mr. Wethey was in 1902, this year. I never had any conversation with Mr. Clark; I am not personally acquainted with him, but I did see Mr. Wethey some time this year.

Q. Since you have been subpoenaed in this case?

A. Oh, no; no, sir.

Q. What was the occasion of your seeing him at that time?

A. Well, am I compelled to answer a thing of that sort?

The EXAMINER.—If it had nothing to do with this case, you can say so.

Mr. MAYNARD.—He said he had a conversation with him concerning these things.

(Testimony of Emerson B. Weirick.)

The WITNESS.—No, I did not.

(By the EXAMINER.)

Q. It had nothing to do with this case?

A. No, sir.

(By Mr. MAYNARD.)

Q. I understand you to say that you had a conversation with Mr. Wethey in regard to these notes.

A. No, sir, it was not in regard to these notes.

Q. In regard to these loans?

A. It was not in regard to these loans or these notes either.

Q. Nor in regard to Mr. Cobban?

A. No, I don't say that.

Q. Did you have a conversation with Mr. Wethey with regard to the lands which Senator Clark had bought from Mr. Cobban?

Mr. BICKFORD.—We object to that as not proper cross-examination, and the witness has already stated that the conversation that he had with Mr. Wethey occurred in the year 1902, much later than any transaction which is mentioned in the bill of complaint in this case, and therefore it is irrelevant and immaterial, and clearly not proper cross-examination.

Mr. MAYNARD.—I think that is so.

The WITNESS.—I would not like to say positively that it was in 1902 that I had the conversation, but it could not have been more than six or seven months ago; it could not have been further back than that.

(Testimony of Emerson B. Weirick.)

Q. It is none of my business—

A. No. I don't want to make a misstatement here, but it could not have been more than six or seven or eight months ago, perhaps not as long as that.

Q. I did not seek to inquire into any conversation with Mr. Wethey or any other man that had not direct connection with this case, but I understood you to say that you had had a conversation with Mr. Wethey in regard to the matter.

A. No, not in regard to the case, no.

Q. So all that you knew about Mr. Cobban selling the lands to Senator Clark was what he told you himself? A. Yes, sir.

Q. In July, 1899, did he tell you of the fact that he had already sold lands to Senator Clark?

A. Well, I would not like to state, but I don't think so; I don't think any lands were disposed of—my recollection is that no lands were disposed of that early.

Q. But assuming that some of the lands were disposed of as early as July, 1899, then what have you to say as to whether or not you had a conversation with Mr. Cobban on that subject. That is a fact in the case, that such is the case, that sales were made by Mr. Cobban to Senator Clark, the defendant in this case, as early as in July, 1899.

Mr. WALSH.—You had better tell him the date.

Mr. MAYNARD.—Well, tell him.

Mr. WALSH.—July 29th, wasn't it?

(Testimony of Emerson B. Weirick.)

A I could not state whether I had any conversation at that time with Mr. Cobban in regard to whom he had sold the lands to.

Q. Can you recall the first conversation that you had with him in regard to the sales that he had made or was about to make to Senator Clark? A. No, sir.

Q. But you stated that you did have conversations with him on the subject?

A. We had quite a good many conversations during the course of the transaction as to the probability and possibility of disposing of the lands and to whom he hoped to sell, but I cannot state the date when he first informed me that Mr. Clark had agreed to take the lands.

Q. But he did so inform you, that Senator Clark had agreed to take the lands? A. Yes; sir.

Q. That he would buy in the western part of the state?

A. That he would take the lands that he was acquiring or had acquired.

Q. Was that statement of that fact by Mr. Cobban to you a further basis for the loans that were made?

A. Why, I would think so. As I say, I cannot just recall any positive, definite conversation, but I think that that would naturally give him a further standing in the bank and further credit—if he had already disposed of the lands to a responsible party, with some sort of contract that the lands would be taken off his hands when title was acquired, that a person loaning

(Testimony of Emerson B. Weirick.)

money would naturally feel like continuing to assist in the acquiring of the lands, furnishing capital to carry the deal through.

Q. Sure. That would be a real banking proposition, wouldn't it?

A. To a degree. If we had confidence in both people, that is, confidence in Mr. Cobban and the person purchasing being responsible and desirous of getting the property, we would consider that a fairly good security.

Q. You knew the financial responsibility of Senator Clark? A. Yes, sir.

Q. And you felt that you could rely upon what Mr. Cobban told you? A. Yes, sir.

Q. And that if he said that he had entered into a contract by which Senator Clark would buy these lands, you could afford to loan the money and take your interest.

Mr. WALSH.—The witness has not said anything of that kind, and it is unfair to put that kind of question to this witness.

Mr. MAYNARD.—I understood him to say that that was substantially the history of the case.

Mr. WALSH.—You could not have understood anything of the kind.

The EXAMINER.—The witness can answer the question in his own way.

A. Well, I want to state that this credit was ex-

(Testimony of Emerson B. Weirick.)

tended to Mr. Cobban before he had any purchaser at all or any contract with any purchaser. It was understood that we would carry him for a certain amount of money, I don't say any specific amount of money, but a reasonable amount of money for the purpose of acquiring this timber land with the idea of selling it, before he had any contract so far as we knew with anybody.

Q. But, Mr. Weirick, isn't it true as a matter of fact, as you have already read, that the first three notes, the beginning of this transaction, were insignificant in amount? A. Yes; they were not large.

Q. And that as a matter of fact there was not any considerable sum, any large amount loaned until after the first deed or about the time of the first conveyance by Mr. Cobban to Senator Clark?

A. I know nothing at all about what time the first conveyance was made.

The EXAMINER.—July 29th, it appears to be.

Q. I will show you the deed. Please examine that deed as to the date. Now, state from an examination of the exhibits there as to whether any considerable amount of money was loaned to Mr. Cobban before that time? A. No, sir, not according to these notes.

Q. That is what I say; that is, according to your notes, what was the first considerable amount that was loaned, with reference to the 29th of July?

A. Well, December 2d, 1899, $20,000.

Q. Wasn't there some before that?

(Testimony of Emerson B. Weirick.)

A. Well, $5,000.

Q. When was that?

A. That was October 17th.

Q. And there was no larger sum than $5,000 before October 17th, was there?

A. No, sir, not in one note—I beg your pardon; I got mixed up here; there was an $8,000 note dated September 28th, 1899.

Q. What was the largest sum that was loaned by your bank before the 29th of July?

A. Well, the largest note was $3,175.

Q. Now, then, Mr. Davis, as president of the bank and the holder of the majority of the stock, and who has absolute control of all the financial management of the bank, might have had a conversation with Mr. Cobban in regard to his relations with Senator Clark about buying this land, that you might not have known of, might he not? A. Yes, it might have occurred.

Q. And that might have been the reason why Mr. Davis, as president, recommended to you the loan, and said that it was a good loan, and advised it?

A. I of course know nothing as to what conversation Mr. Davis might have had with Mr. Cobban.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Weirick, speaking about the conversation had concerning the sales to Senator Clark, do you know whether that was after the sale was consummated or

(Testimony of Emerson B. Weirick.)

before? In other words, was it a recital that the sale had been made, or that they were going to make the sale?

A. Well, now, I cannot say in regard to that.

Q. You remember that there was something said about selling lands to Senator Clark?

A. Yes, sir.

Q. But just exactly what the details of the conversation were, as I understand you, you are not able to tell us? A. No, sir, I don't recall now.

Q. Can you tell us which of those notes are renewals?

A. No, it is almost an impossibility for me to do that.

Q. Are you prepared to say that any of them are?

A. Well, no, I am not prepared to say that any of them are renewals. I want to say this, that we never loaned Mr. Cobban at any one time the amount of money represented by these notes.

Q. Isn't it a fact—

A. I want to be understood that all of these notes are genuine, but that we never loaned at any one time the aggregate amount of these notes.

Q. Isn't it a fact that in most instances the amounts of these notes were paid, and that subsequently that other loans were made?

A. Yes; I have so stated.

Q. You don't call that a renewal of a note?

A. No, sir.

(Testimony of Emerson B. Weirick.)

Q. A renewal means that when a note comes due, it is taken up and a new note executed in place of it?

A. Yes, sir.

Q. Now, the register would in such a case as that show the execution of a new note practically for the amount of the old note, would it not? A. Yes, sir.

Q. So that, are you not ordinarily able to tell by an examination of the book whether in all probability a certain note is or is not a renewal?

A. Well, I believe it could be checked up. Sometimes, you know, in renewing, they add the interest to it.

Recross-examination.

(By Mr. MAYNARD.)

Q. The proceeds of these notes were simply credited to Mr. Cobban, and he checked against it, didn't he?

A. That is my recollection, that all of them went to his credit.

Q. And he was engaged in the real estate business in Missoula and Butte at the time, was he not?

A. Yes, sir. I think he had gone to Missoula. I am not really sure about his having gone to Missoula; he had some real estate in Missoula, but I think he still had his offices in Butte.

Q. And how much of the proceeds of these notes did he check out or use in buying timber lands, do you know? A. No, sir; I could not tell.

(Testimony of Emerson B. Weirick.)

Q. There was no agreement made between you and Mr. Cobban that this money was to be used exclusively for the purchase of timber lands?

A. I don't think there was any agreement of that sort.

Q. And that it was open to him—

A. I want to say that it was understood when we advanced this money that that was what it was to be used for, but I don't think we made him stand up to a positive agreement that all of it should be invested there.

Q. As a matter of fact, the amount that was used in his general real estate business and the amount that he used for the purchase of timber lands, you have no knowledge? A. No, sir, I could not tell.

It is stipulated between the parties hereto that the testimony of the witness, Weirick, shall be read by the Examiner, and that his certificate that the same has been correctly transcribed shall be received with like effect as if the same had been read, corrected and signed by the witness.

I hereby certify that I have read the foregoing testimony of E. B. Weirick, and that the same is a true and correct report of said testimony.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Friday morning, July 11th, 1903, at ten o'clock.

The hearing was resumed pursuant to adjournment.

By consent of all the parties, ANDREW J. DAVIS was called as a witness on behalf of the defendant, and after being duly sworn by the Examiner, testified as follows:

(By Mr. WALSH.)

Q. Mr. Davis, you reside in Butte, do you?

A. Yes, sir.

Q. What is your business?

A. President of the First National Bank of Butte.

Q. How long have you occupied that position in connection with that bank?

A. Seven or eight years.

Q. You were president of the bank, then, during the year 1899? A. I was.

Q. Do you know one R. M. Cobban? A. I do.

Q. How long have you known him, Mr. Davis?

A. Oh, about eighteen years.

Q. Where did you know him?

A. I knew him at Butte.

Q. Have you ever had any business transactions with him in connection with that bank?

A. Yes, sir, I have.

Q. Over what period have those transactions extended? A. During eighteen years.

Q. And in a general way what was the nature of those transactions? A. Loaning money to him.

(Testimony of Andrew J. Davis.)

Q. What business was he engaged in?

A. Real estate and loans.

Q. And where? A. At Butte.

Q. Now, did you have any transactions with him during the year 1899? A. Yes, sir.

Q. And those were of the same character, were they? A. Yes, sir.

Q. Mr. Davis, I call your attention to exhibits numbered 316 to 330 inclusive, except Nos. 320, 326 and 327, and ask you if those evidence transactions had between the bank and Mr. Cobban during the year 1899?

A. Yes, sir, they do.

Q. Now, I call your attention to Exhibits Nos. 326 and 327, which seem to have been paid at your bank, Mr. Davis, and ask you if you have any recollection of the transactions evidenced by those exhibits?

A. Yes, sir.

Q. I wish you would explain what it was.

A. This transaction was a loan to Mr. Cobban and Mr. Dinsmore, on what is known as the Higgins property at Missoula.

Q. Well, did that have anything to do with the timber transactions?

A. No, not that I know of.

Q. Now, referring to the exhibits to which your attention was first called, can you tell us which of those notes represent original loans, and which of them are renewals, Mr. Davis?

(Testimony of Andrew J. Davis.)

A. Defendant's Exhibit No. 325, for $2,812,53; $1,500.00 of that amount was not in renewal of notes; the balance was. Exhibit No. 322 for $375.14 was in renewal. Exhibit No. 324 was for a loan for $1,500.00. Exhibit No. 326 for $8,000.00 was for a loan, not a renewal. Exhibit No. 319 for $5,000.00 was for a loan, and not a renewal. Exhibit No. 317 for $5,000.00 was for a loan. Exhibit No. 322, for $20.000.00 was for a loan. Exhibit No. 328 for $12,500.00, was for a loan. Exhibit No. 323 for $1,000.00 was for a loan. Exhibit No. 318 for $26,000.00 was for a loan. Exhibit No. 330 for $5,000.00 was for a loan. Exhibit No. 329 for $10,600 was for a loan.

Q. What is No. 329, Mr. Davis?

A. That is for a loan.

Q. And what relation does it bear to exhibit No. 320?

A. It seems to be a duplicate. It has not been paid.

Q. Well, I accepted exhibit No. 320 from the original list that I gave you.

A. Oh, I didn't know that.

Q. Exhibit No. 329 is a loan also, is it?

A. Yes, sir.

Q. Now, we find exhibits No. 320 and 323 to be renewals; are those renewals of each of them, Mr. Davis, or of other notes? That is, is the one a renewal of the other? A. No, sir.

Q. But of other obligations? A. Yes, sir.

(Testimony of Andrew J. Davis.)

Q. Are they renewals of any of the other exhibits to which your attention is called, or are they renewals of notes other than those that are here?

A. Other than those that are here.

Q. Did you refresh your recollection from your books, Mr. Davis, before you came over here?

A. I did.

Q. And during the year 1899, do your books show any other loans made to Mr. Cobban than those to which your attention has been invited by the exhibits?

A. I don't know without looking over them. We loaned Mr. Cobban $2,000, July 12th.

Q. Well, there were some other transactions, then, besides those? A. Yes, sir.

Q. Now, Mr. Davis, have you any independent recollection of these transactions in the matter of these loans, made to Mr. Cobban, during the year 1899 than is suggested to you by the books, and by the notes before you? I mean, do you recall the matter?

A. Yes, sir.

Q. What inquiries, if any, did you make at the time these loans were made, as to the purposes for which the money was desired by Mr. Cobban?

A. Well, I inquired for what he intended to do with the money, and I satisfied myself that the bank was safe in making the loans.

Q. And that was your purpose of making the inquiry, so as to ascertain whether the loans would be safe?

A. Yes, sir.

(Testimony of Andrew J. Davis.)

Q. What did Mr. Cobban say to you at the time as to the purpose to which he desired to devote this money?

A. Well, at this time he was buying timber lands in Missoula, and a portion of it—in fact, the greater portion of it, and perhaps all of it, was to pay for timber land.

Q. What I want to know from you is, Mr. Davis, what he said about that at the time you made the loans to him?

A. Well, from our conversations, he satisfied me that the money would be safe; and he intended to put it into safe propositions in buying timber.

By Mr. MAYNARD.—And what?

A. In buying timber lands, and making investments of that kind.

Q. In buying timber, and, you said—

A. Yes, sir.

Q. Did you finish your sentence? A. Yes, sir.

By Mr. WALSH.—(Resuming.) Q. Mr. Davis, did you have any talk with Mr. Cobban at any time during the summer of 1899, when the matter of these lands was under consideration, or any of them, with reference to efforts being made to dispose of the timber that he had acquired, and as to where he expected to dispose of it?

A. Yes, sir.

Q. What was that conversation in substance?

A. Well, he explained to me that he had gotten a number of tracts of timber lands together, and consid-

(Testimony of Andrew J. Davis.)

ered them valuable, and thought that he would be able to sell them to different parties, who might go into the timber business and have use for the timber.

Q. Well, do you recall, now, any persons who he mentioned in that connection?

A. Well, he mentioned Mr. Clark.

Q. Anybody else?

A. I know he talked of the Largey people, as we call it, that is, the Largey estate.

Q. Anybody else?

A. I cannot think of anybody else just now.

Q. Do you recall, now, Mr. Davis, anything about any efforts he spoke of making in the East?

A. Yes, sir.

Q. What was that?

A. Well, it was, as I recollect, about Wisconsin people he had known for quite a while, who had been familiar with the lumber business in Wisconsin for years, and thought he could do something with it back there.

Q. In the matter of selling the timber lands?

A. In the matter of selling the timber lands, yes, sir.

Q. Do you remember any mention of Mr. Carroll of the Carroll Lumber Company? A. Yes, sir.

Q. Do you remember any mention of the Blackfoot Milling Company?

A. I know that they were mentioned in a way, that they should take the land; not that I recollect that he said that exactly, but that he intended to make an effort to sell the land.

(Testimony of Andrew J. Davis.)

Q. Meant that it would be eligible for them in case that they should desire to purchase?

A. Yes, sir.

Q. Well, now, in the course of the conversation had with Mr. Cobban, what, if anything, did he say to you to the effect that he was acting as the agent for Mr. Clark in the acquisition of these lands?

A. He never explained to me that he was acting as agent for any person.

Q. Whose money was that that you loaned to Mr. Cobban?

A. It was money of the First National Bank of Butte.

Q. You were not acting, then, as the agent of W. A. Clark in loaning this money? A. No, sir.

Q. That is all.

A. I would like to explain a little; you asked in a general way whose money that was. There was a part of that loaned, a part of that money belonged to Mr. Gaylord.

Q. You refer now to the money represented by the two notes to Mr. Gaylord?

A. Yes, sir, and the rest of it was the money of the First National Bank of Butte.

Q. And the money loaned to Mr. Cobban, with the exception of the two notes to Mr. Gaylord, then, was money belonging to the first National Bank of Butte.

A. Money of the first National Bank of Butte, yes, sir.

(Testimony of Andrew J. Davis.)

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Davis, over what length of time do those notes that were not renewals, range?

A. From July, 1899, to December, 1900. I will take that back. Well, that isn't right; from July, 1899, to July, 1900.

Q. To July of the year 1900? A. Yes, sir.

Q. Are you able to state what was the largest amount that Mr. Cobban had at any time, as represented by those exhibits?

A. I would say about $25,000 or $30,000. You refer to the total of the loans, of course?

Q. The total of the loans, yes, sir.

A. The total of the loans of the bank?

Q. Yes, sir.

A. I would say it did not exceed $30,000 at one time.

Q. It did not? A. No, sir.

Q. Had you during the eighteen years' business dealings with Mr. Cobban, previous to the date of this series of notes had any arrangement with him, by which he was to have a certain line of credit?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination.

A. We had been loaning him money all through the eighteen years, more or less; and no doubt part of the time he had overdrafts, with the understanding that his limit was a certain amount of course.

Q. What was that limit?

(Testimony of Andrew J. Davis.)

A. Well, I couldn't recollect that at all. It would be different at different times according to our understanding. He would ask for a certain amount, and we would talk the matter over, and inquire into the amounts, etc., and have an understanding about it.

Q. That is, as I understand it. It wasn't fixed, the amount of credit that he was entitled to, by your bank, but it all depended upon the application made, at the time, as to whether it would be granted or not.

A. Yes, sir.

Q. That would depend entirely upon the facts and circumstances, as they were disclosed to you by him when he wanted the loan? A. Yes, sir.

Q. So that—nor can you remember as to the highest amount that he had ever obtained from your bank on his individual paper, previous to the date of the first exhibit. A. I cannot now answer that.

Q. Would you be able to from an examination of your books, ascertain that fact? A. Yes, sir.

Q. Are you able to say that he at any time, had had a loan to exceed ten thousand dollars at your bank on unsecured individual paper?

A. I would think so, yes, sir.

Q. But you don't know it?

A. I don't know positively, no.

Q. And if such was the case, it would be on the—representations made to you by him, that the money was to come from some particular source; that he had some particular purpose for which he used the money, and

(Testimony of Andrew J. Davis.)

from that business proposition that he disclosed to you, the money would be realized?

A. Yes, sir, a safe investment.

Q. So that when the time came, when he made these propositions for loans, represented by these exhibits, the loan was made on the strength of the representations that the money was to be used for the purpose of buying timber lands, and that when the timber was sold the proceeds would be used for the purpose of taking up the paper.

A. Yes, sir. They have all been paid.

Q. What is that?

A. The notes have all been paid.

Q. Were you satisfied to make the loans on the uncertainty that the lands would be speedily sold?

A. Yes, I was at that time. I had confidence in Mr. Cobban's judgment, and ability, and I agreed with him; I thought it was a good scheme.

Q. What was the scheme?

A. Well, the picking up of these odds and ends of timber lands, from those holding them to sell at a profit.

Q. Please state more distinctly and definitely, Mr. Davis, what you mean by picking up odds and ends of timber lands?

A. Well, buying small tracts and keeping them all together and making a larger quantity—a larger acreage—which might be kept for the present. And as I

(Testimony of Andrew J. Davis.)

stated, for people going into the timber business, and having use for the timber.

Q. Was that the representation that was made to you by Mr. Cobban? A. Yes, sir.

Q. Just what did he say to you as to how he was to pick up these odds and ends of timber land?

A. Well, he was to buy them, that was my understanding.

Q. Won't you be kind enough, Mr. Davis, to give me as near as you can, the substance of the language that he used?

A. No, I don't recall any of the exact words of his conversation. The substance of it was that he intended to move around amongst the people who held small lots and pick them up at prices which he considered to be good investments.

Q. Did he tell you where this land was situated?

A. I understood it was down in Missoula County.

Q. Well, didn't you inquire as to just how he was to pick up these small descriptions?

A. Well, not in detail. He said he was to buy them. He was to buy them of people that were holding them. I didn't ask him how he was to go into the negotiations at all. I supposed he understood that.

Q. And nothing was said to you in any way to the effect that he was to furnish the money to the people to buy the land?

A. No. I understood he was to deal directly with the people, and purchase the land from them; that is,

(Testimony of Andrew J. Davis.)

deal directly with them himself, or have agents negotiate with them, the same as in buying any real estate. Anyway, to buy them at the most reasonable prices, I suppose.

Q. Well, did he say anything to you about the fact that a large number of people were entitled to take up lands under the Stone and Timber Acts, and under various acts of Congress, and that they were unable to use their legal right, by reason of the fact that they had no money, and he wanted the money to loan to them, to advance to them, and to enable them to acquire the timber, and then after they had acquired it that they would sell it to him?

A. No, his talk was all that he was to buy timber land from the people who owned them.

Q. But how they were to acquire the lands, or how they were to own them, or how they did own them, or anything of that kind, you never inquired?

A. No, sir.

Q. And had no knowledge upon that point?

A. No, sir.

Q. At any time? A. No, sir.

Q. But he did tell you that he was to obtain these small holdings and bunch them together and then wholesale them out to large dealers?

A. That is right, yes, sir.

Q. To persons that wanted to use the timber?

A. Yes, sir.

(Testimony of Andrew J. Davis.)

Q. Now, you mentioned the name of Senator Clark, the defendant in this case; first in reply to my brother Walsh as the person that he spoke to you about—told you would be likely to be a purchaser. Now, what did he say to you about it?

A. He spoke of Mr. Clark that he might be buying timber land, or would have use for the timber, and it would be a good chance to get even with the other Milling Company down there, known as the Blackfoot Milling Company. He explained to me that this timber was very valuable to a person who wished to oppose them, and he was very much surprised that they hadn't taken them all.

Q. How was Senator Clark to get even?

A. To interfere with their operations, their milling and logging operations.

Q. Well, that was one purpose that Senator Clark might want them for?

A. Yes, that was Mr. Cobban's idea.

Q. He wanted to use it for mining purpose, too, didn't he? A. For mining, yes.

Q. And for building operations, too?

A. Yes, sir.

Q. And to use it for his mining operations, and at his various mills in Western Montana?

A. Yes, I suppose so, but I don't know much about his mills.

Q. Well, those different sources, and uses were named to you by Mr. Cobban, were they not?

(Testimony of Andrew J. Davis.)

A. Well, I think he mentioned Mr. Clark, that he might buy it, and defeat the Blackfoot Milling Company there and interfere with their operations in that part of the country.

Q. Now, do I understand, Mr. Davis, that when you were loaning this money, represented by these exhibits, to Mr. Cobban during this year from July, 1899, to July, 1900, that it was left open so far as anything was said by Mr. Cobban to you, about the Clark purchases; that it was purely an idea that was in Mr. Cobban's mind that Mr. Clark might, for the purposes and reasons that have been named, buy, or when was it first told to you that Mr. Clark had agreed to buy, and was going to buy the lands and take them off his hands?

A. I don't recollect when he had agreed to buy; but the investmnt spoken of by Mr. Cobban were speculations on Mr. Cobban's part. He considered them good investments, and thought that he could clean up with a profit. And, as I said, I had great confidence in his ability and honesty, and had known him a good many years.

Q. As a matter of fact, Mr. Cobban did sell a large amount of timber, amounting to practically 175,000,000 to 200,000,000 feet of timber that he had bought in this way, to Senator Clark during this year?

A. He sold some of them, but I don't know how much.

Q. I am stating the fact to you. Now, wasn't that fact disclosed to you by Mr. Cobban when some of this

(Testimony of Andrew J. Davis.)

paper was retired, and an application was made for a new loan? A. Yes, sir.

Q. Well, what did he say?

A. Well, he explained to me that he had sold some of it at a profit.

Q. To Senator Clark?

A. Yes, sir, and he was anxious to go right ahead and buy more; more anxious because he had made what we term a "nice little clean-up" on it. And for that reason we were more liberal with him, and he had convinced me that his judgment was more correct than I thought it was.

Q. You were willing then to give him larger loan to enable him to sell to Senator Clark?

A. Well, to gather in the land and sell to Senator Clark, or whoever might want to purchase.

Q. Well, he told you, after he had first communicated the fact to you, that he had sold to Senator Clark, and cleaned-up, as you say, a good thing, and that he wanted to get more land, and sell them to Senator Clark.

A. I don't remember of him saying that.

Q. You don't remember?

A. No, because I testified that he consulted Mr. Carroll, and told me that he had consulted Mr. Carroll, and whoever it was that he had sold to. He had advised me to invest some of my own money down there, and my recollection is that he advised his uncle to put in some money there too. I think his uncle did put in

(Testimony of Andrew J. Davis.)

some money in some way; loaned to him some money. My idea is that he said he had advised his intimate acquaintances, and he was advising them to go down there and invest, saying that it was a good thing, and that they couldn't lose anything. I thought so myself.

Q. Did you invest, too?

A. No, I loaned him the money.

Q. What is that?

A. No, I loaned him the money.

Q. Loaned Mr. Cobban the money?

A. Yes, sir.

Q. How much did you loan him?

A. Well, what I did, I did as an officer of the bank.

Q. Well, as representing the bank?

A. Yes, sir.

Q. I suppose it was the same thing?

A. Oh, yes.

Q. Well, you don't know of him having sold any of the land that he bought, other than to Senator Clark, do you? Do you know of his selling to anybody else?

A. I don't recollect now, no, sir.

Q. Are you positive that he did not state at any time to you just how he was to acquire this land, other than that he was simply to buy of the individual small holder?

A. Well, I think he scripped some. I know he scripped quite a lot in Idaho. I know he scripped a great deal, and that he was buying scrip. But, as you

(Testimony of Andrew J. Davis.)

stated a while ago, to advance money to people, to make their proofs, he never explained that at all to me.

Q. You didn't know that he was doing that?

A. No, sir.

Q. There was no suggestion made by you at any time that he was to use this money that he obtained from your bank for the purpose of loaning money to these people, and taking a mortgage from them?

A. I don't recollect that, no, sir. It is, of course, possible that he might have negotiated some mortgage notes with these small holders. But I wouldn't know whether they were timber lands or Missoula property.

Q. And the sole representation that he made to you at the time that he secured these loans during this whole year, was that he wanted the money to buy the land? A. Yes, that was the purpose of it.

Q. You never had any talk with Clark or Wethey in regard to the matter, did you, in any way?

A. No, sir. The only thing that I can recollect is that Mr. Wethey wrote me once, since these proceedings were commenced, in regard to two checks that had been given to Mr. Cobban, and asked if we had any record of them in our bank. That was since this suit was entered.

Q. You had no conversation with Mr. Wethey?

A. No, sir, I never talked with Mr. Clark about it, or Mr. Wethey.

(Testimony of Andrew J. Davis.)

Redirect Examination.

Q. Mr. Davis, do you remember of having been advised of any sale made by Mr. Cobban to the Largey estate? A. No, sir, I don't think I do.

Q. If you were advised of it, you don't now remember of it? A. No, sir.

Q. Now, Mr. Davis, there is one thing I want to ask you. Of course, in connection with the investigations that you had, and the conversation with Mr. Cobban relative to those loans, I desire to ask you whether, with you personally, or with your bank, Mr. Cobban had any personal credit. That is to say, credit that would be extended to him without any particular reference to the investment that he was going into?

A. Oh, yes.

Q. How did that come about, Mr. Davis?

A. By having done business with me for years, and always having found him honorable and honest.

Q. And how, as to his business capacity and sagacity? A. Yes.

Q. You found that good? A. Yes, sir.

Q Now, you spoke, Mr. Davis, about it being possible that Mr. Cobban had negotiated with you some small mortgage loans. I wish you would tell us what you mean by that, and how the deals were made.

A. Well, I recall from the memorandum I have here a note made during 1900 of the Missoula Brick Company for $3,500. Now, I understood that was secured by a mortgage.

(Testimony of Andrew J. Davis.)

Q. Well, let us understand what that was. That was a mortgage, was it?

A. That was a note signed by the Missoula Brick Company, in favor of R. M. Cobban, or perhaps Cobban & Dinsmore, for $3,500.

Q. And sold to you? A. And sold to us.

Q. Now, was that the only instance of a transaction of that character, that you recall in the course of your business transactions with Mr. Cobban?

A. No, sir.

Q. He had negotiated notes with you in the same manner prior to this time?

A. Oh, yes, for years.

Q. So, if I understand you, it was not an unusual thing for him to do so? A. No, sir.

Recross-examination.

Q. My brother Walsh refers to this Bitterroot purchase of the timber lands that were sold to the Largey estate down on the Bitterroot? A. Yes, sir.

Q. You are unable to state how much of this money he obtained from you was used for that purpose?

A. No, I couldn't state as to that. I haven't much recollection as to the Largey estate. I know he talked of them buying some of these timber lands.

Q. And was Mr. Cobban engaged in a general real estate business in Butte for years—during this eighteen years that you have referred to?

A. Yes, most of the time.

(Testimony of Andrew J. Davis.)

Q. And in the collateral branches of the business that are connected with the real estate business, mak ing loans, and selling property, and so on, and negotiating loans?

A. Yes, sir, you might say that was his business.

Q. Well, in 1899, when he moved to Missoula, did he still retain his business interests in Butte, and keep his office there, too?

A. I don't know that he kept an office for himself. He was up there and transacted considerable business with the bank.

Q. And this money that is represented by these exhibits that was loaned to him by you, was credited to his account and checked out by him?

A. Yes, sir.

Q. As he desired? A. Yes, sir.

Q. Mr. Weirick was here yesterday, Mr. Davis, and I understood him to say that it was very difficult to determine from the books of the bank in the general business, as to how many of these notes were renewal notes, and how many were not. How are you able from your memorandum that you have, to determine that fact?

A. Why, he telephoned yesterday and asked me to look it up, and investigate the records, and ascertain which were renewals and which were not.

Q. Well, how would that affect—how would that fact appear on the records?

(Testimony of Andrew J. Davis.)

A. Well, we would find both the debit and the credit the same day. We would find a new note, which would be a debit on our books—a debit to what we would call our bills receivable account, and on that same day as there was a renewal note, there would be a credit to bills receivable, which would be signed by Mr. Cobban, and I found on going over these accounts that there was a credit to R. M. Cobban; whereas if it was an original note it would not appear that way.

Q. Well, it is just as likely to be one way as the other, isn't it? A. What is that?

Q. Well, it would be entered up, and you would check against it as you have stated?

A. Well, he would check it the same way, but he didn't do that.

Q. How do you know?

A. Because I looked at his account. I looked at the entries on our books myself to see about it.

Q. Did you do it yourself?

A. Yes, sir, I did it myself.

It is hereby stipulated by counsel for the respective parties that the Examiner may carefully read over and correct the testimony of the witness, Andrew J. Davis, and that the said testimony of said witness, when so read over and corrected shall have the same force and effect as if read over, corrected, and subscribed by the witness.

(Testimony of Andrew J. Davis.)

CERTIFICATE.

I hereby certify that I have carefully read over and corrected the testimony of the witness, A. J. Davis, under the foregoing stipulation, and that the same is now correct.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

By Mr. WALSH.—If your Honor please, that closes the case on behalf of the defendant, but we desire to recall Mr. Griswold for further cross-examination.

Thereupon, CHAUNCEY L. GRISWOLD was recalled to the stand and cross-examined further by Mr. Walsh as follows:

Q. Mr. Griswold, you told us that you paid for the Gilles and Cloutier claims at the land office in Helena out of the twenty-seven hundred dollars, or thereabouts that you got from Mr. Cobban at Ovando.

A. I did.

Q. That was your testimony about that matter, was it? A. Yes, sir.

Q. Well, when you testified about this matter in the hearing before S. G. Murray, referee at Missoula, in your case against Mr. Cobban, you told a different story about that, didn't you?

A. Well, I couldn't say in regard to that.

Q. You testified at that time, did you not, that you paid for these claims out of your own money?

(Testimony of Chauncey L. Griswold.)

A. I did not.

Q. I desire to ask you, on that hearing, if you didn't testify as follows in the course of your examination? You said to this court in the cross-examination: "You state to this court now that from your method of keeping books that you should charge $82.50 to Mr. Cobban, that he gave you the money to pay the "Garnet News," and that you should now have judgment for $82.50? A. I did, and I am positive Mr. Cobban charged the money to me. Q. Suppose this had gone by default, would you then take judgment against Mr. Cobban for that amount including the $82.50? A. I think I would. Q. I will ask you if the same is true of the $75.00? A. The same is true under the same conditions. Q. He gave you the money and you paid it out and then charged him with the money and now seek to recover again? A. Yes, sir, I suppose so. Q. Is the same true of the Bourquin claim? A. Yes, sir. Q. I understand that the same is true of the Gilles and Cloutier proof? A. That was my money that was paid for the final proof of the Gilles and Cloutier claims."

Q. Did you testify that way?

A. Well, I couldn't say if I did or did not.

Q. Will you swear that you did not?

A. I wouldn't swear one way or the other about it.

Q. Now, you charged Mr. Cobban in that action with something on account of attending at Helena in the matter of the final proof of Lizzie Wells, didn't you?

(Testimony of Chauncey L. Griswold.)

By Mr. MAYNARD.—I object to that because the same question has been asked and answered a number or times; and the whole subject matter has been previously inquired into.

A. Well, I wouldn't say that I did. I charged Mr. Cobban for my services that I rendered in regard to Mrs. Wells' claim. Whether it was coming over to Helena or going up to the Blackfoot to see her, I wouldn't say.

Q. Well, I ask you if you didn't charge Mr. Cobban for services in going to Helena on her final proof?

A. I wouldn't say, possibly I did.

Q. Well, didn't you at the hearing I have referred to, swear that you did?

A. I wouldn't swear whether I did or I did not.

Q. I desire to ask you whether on the hearing I have heretofore mentioned, you didn't testify as follows: "Q. I want to ask you how many days you spent in the Thomas Pelky and Chattin cases in the land office at Helena? A. Five days. Q. How many days in the McDonald case? A. Three days. Q. John B. Catlin and party, in the Helena land office, how many days? A. Five days. Q. In the Edward Doney case. A. Five days. Q. The Dorman and Moss cases, five days at Helena. Kilbourn case one day at Missoula, and Lizzie Wells, at Helena, five days? A. Yes, sir." Q. And did you charge him for five days attendance in the matter of the final proof of Lizzie Wells at Helena?

(Testimony of Chauncey L. Griswold.)

By Mr. MAYNARD.—I desire to interpose the objection that was so frequently made by counsel on the other side, that it is incompetent, under an alleged rule of practice in Montana, to interrogate a witness upon a paper that has not been shown him, and identified properly as testimony that was given upon a former hearing. Counsel has some kind of a paper before him, which they claim contains certain testimony of Mr. Griswold; and no opportunity has been presented to him to identify it, or to see it, or to know whether in fact such testimony, as the counsel for the defendant has before him, was given by him, and correctly transcribed, and the witness has a right to examine the same before he is called upon to answer the question.

A. Well, not in regard to that matter.

Q. Mr. Griswold, you misunderstand the question I am asking you, whether you did not so testify at Missoula?

A. Well, I cannot say whether I did testify that way or not. The McDonald case I know nothing about.

Q. No, I am simply asking you about the Lizzie Wells case, whether you didn't attend five days at Helena in the matter of the final proof of Lizzie Wells?

A. Five days wasn't spent in Helena. It was on the road to Clearwater and Drummond.

Q. I am not asking you that. I am asking you whether you didn't swear that way at Missoula?

A. I couldn't say without some further examination of the case.

(Testimony of Chauncey L. Griswold.)

Redirect Examination.

(By Mr. MAYNARD.)

Q. You think, Mr. Griswold, in the specific cases that counsel has called your attention to now, that if there were any such charges made that it would be set forth in the bill of complaint—in the account between you and Mr. Cobban, showing the full settlement of debits and credits which you had at the time of the settlement of your suit in Missoula, and which you delivered over to Mr. Cobban, and which Mr. Cobban has refused upon repeated demands, to furnish us with.

By Mr. WALSH.—We object to that for the reason that it is not proper redirect examination of this witness. He was interrogated simply whether or not he swore to certain things upon the hearing in Missoula before the referee in the case of Griswold vs. Cobban.

By Mr. MAYNARD.—He says that he is unable at this time to say what he did swear to about it.

Q. Now, I ask, if as a matter of fact, if there were any such charges in fact, they would not be set forth in that account, which Mr. Cobban now has in his possession, and which he refuses to deliver after demand made upon him.

By Mr. WALSH.—That isn't interrogating the witness with reference to the matter.

By the EXAMINER.—Let him answer the question if he can.

(Testimony of Chauncey L. Griswold.)

A. It surely would be one of the items in a bill that I made against Mr. Cobban, and tendered to him, and which was delivered to him upon the settlement of my case against him.

Q. And that you had that in your possession—and if you now have it in your possession and have the privilege of examining it, you would be able to refresh your recollection as to the subject matter, would you not?

A. I surely would.

CHAUNCEY L. GRISWOLD.

Subscribed and sworn to before me this sixteenth day of August, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

By Mr. WALSH.—I desire to swear the stenographer, Mr. Cooper.

CHARLES H. COOPER, a witness called by the defendant, being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Cooper, you are one of the stenographers who took the testimony in this hearing, are you not?

A. Yes, sir.

Q. And who took it with you?

A. Mr. George H. Macdougall, and Mr. Charles W. Blair.

(Testimony of Charles H. Cooper.)

Q. And wherever the name "Cooper" appears at the top of the page, it signifies what?

A. It signifies that I took that testimony and transcribed it.

Q. And wherever the word "Mac" appears at the top of the page, what does that signify?

A. It signifies that Mr. George H. Macdougall took it.

Q. I wish you would state whether you accurately took the testimony as it was given, and accurately transcribed it?

A. Yes, sir, I think so; as accurately as it is possible for one to hear, and to write as he understands it.

Q. And when you transcribed it did you transcribe it in longhand, or did you transcribe it in typewriting?

A. In typewriting.

Q. I call your attention to page 96 of the record where the words "Yes, sir, I suppose so, I don't know" appears enclosed in pen work. I wish you would state whether the witness gave the testimony as it is there transcribed? A. Yes, sir.

Q. I call your attention to the record, page 97, where appears another line, interlined in script, "I do not konw if it is Miss or Mrs.," with a notation on the margin, H. N. B. Ex. I wish you would state whether the witness gave that testimony?

A. I think it was given as I had it there in typewriting. Of course it is just possible that I might not have

(Testimony of Charles H. Cooper.)

heard it all; but I think it is likely that I heard it all and reported it as it appears in the testimony in typewriting.

Q. I call your attention to page 98 of the record now and I find interlined in script "Kilbourn and S. Tepper who were with Martin" and after the word, "Yes, sir," the words in script "Both Kilbourn and Tepper were in my employ." I wish you would state whether the witness gave that testimony on the witness stand or not?

A. I would make the same answer to that as to the previous question.

Q. That is, that while on the witness-stand he gave the testimony as it appears in the typewriting?

A. Yes, sir.

Q. And didn't give that which appears in the script?

A. No, sir; with the explanation that I have made above.

Q. And would you say the same with reference to the entire testimony? A. Yes, sir.

Q. That is to say, that those alterations and additions which appear in the transcript, in script, were made at the time that the testimony was read over by the witness and subscribed by him before the Master?

A. Yes, sir.

Cross-examination.

(By Mr. MAYNARD.)

Q. I will ask you if you know in whose handwriting the script is? A. Yes, sir, I do.

Q. Whose is it?

(Testimony of Charles H. Cooper.)

A. It is the handwriting of Judge Blake, the Examiner in this case.

Q. And the initials, "H. N. B. Ex." is that the handwriting of the Examiner? A. Yes, sir.

Redirect Examination.

(By Mr. WALSH.)

Q. And you take it from the notation that the changes were suggested by the witness, and the Master, at the time he subscribed the testimony?

By Mr. MAYNARD.—I object to that for the reason that the stenographer wasn't present at the time and it is incompetent for him to testify to that.

By Mr. WALSH.—Well, I will withdraw the question if there is any objection to it.

Q. I call your attention to page 328 of the testimony, and show you the word "Yes," is changed to "No," and the answer succeeding "No, sir" is changed to "Yes," and in the next succeeding answer is changed to "No" from "Yes." I wish you would state if you can if the witness gave the testimony as it is typewritten while on the witness-stand, and how he gave it?

A. I should say that the witness gave the testimony as it appears in the typewriting.

Q. What have you to say, as to whether he did or did not give the testimony now appearing in script on that page, "Locked in with the gentleman named, in the private room of Marshall & Stiff's office."

(Testimony of Charles H. Cooper.)

A. My recollection is that it was just as it appears in the typewriting.

CHARLES H. COOPER.

Subscribed and sworn to before me this sixteenth day of August, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

GEORGE H. MACDOUGALL, a witness called by the defendant, being first duly sworn, testified as follows:

Q. Mr. Macdougall, you are one of the stenographers who took the testimony on this hearing, are you not?

A. Yes, sir.

Q. With Mr. Cooper and Mr. Blair?

A. Yes, sir.

Q. I wish you would state whether you accurately noted the testimony as it was given?

A. Yes, sir, to the best of my ability.

Q. And whether you accurately transcribed it or caused it to be transcribed? A. Yes, sir.

Q. Now, I call your attention to page 78 of the record in this case, and I find there written in script the words "The deed of Harriet Watson could not be fully made out as her husband had to sign it." I ask you whether that testimony was given by the witness, as his testimony on the hearing? A. No, sir, it was not.

Q. In whose handwriting is the correction?

A. Written in the handwriting of the Examiner. A word possibly might have been left out; but not a sen-

(Testimony of George H. MacDougall.)

tence like that. It might be a mistake in the transcript as to a word but not a whole sentence like that.

Q. I call your attention to some interlineations in script on page 68 of the record in this case and ask you whether the testimony was given as it appears in the typewriting, or as it appears modified by the script.

A. Well, it might not be. My opinion is that it was given as it appears in the typewriting. Of course there is a correction of just a word or two, and it is possible that I might have misunderstood what the witness meant; but I am inclined to make the statement that the way I transcribed it is the way he spoke it at the time.

Q. By "the way you transcribe it" you mean the way it appears in the typewriting?

A. Yes, sir, in the typewriting the script isn't any of my business.

Q. And what have you to say as to any additions or alterations appearing in the transcript, in script, as to whether the testimony which appears in the script also, was not given by the witness on the witness-stand?

A. Well, as I said before, if it was simply a correction of a word or two, it might be either my mistake, or the typewriter's mistake, but when they start to interpolate phrases or sentences, I say that they didn't say it on the stand. If there was anything of that kind, I would have it in my report.

Q. Suppose that the answer to the question appears in the typewritten transcript as "yes," and that is

(Testimony of George H. MacDougall.)

erased and the word "no" is substituted in its place, what would you say as to what the fact was as it came from the witness on the witness-stand?

A. I wouldn't care to answer that unless I saw the question and answer, because it might be my mistake, and it might be a slight change of the testimony. I couldn't say.

By Mr. BICKFORD.—Supposing that it had followed along for a distance of a half a dozen different questions on the same page, of testimony, would that have been possible as a mistake on your part?

By Mr. MAYNARD.—I object to that for the reason that it is a hypothetical question based upon nothing. And that, as a matter of fact, Mr. MacDougall simply testified to that which everybody knows, that at the time of the taking of the testimony he might not have correctly heard the answer.

By Mr. BICKFORD.—You are not on the witness-stand.

By Mr. MAYNARD.—Well, I am making the objection; and he may have made some mistake in transcribing the testimony at the time. And further, that in dictating from his notes to his stenographer—to the typewriter, the typewriter may have made a mistake in transcribing it.

Q. I call your attention to—

(Testimony of George H. MacDougall.)

By Mr. MAYNARD.—And for that reason it is impossible for a stenographer to answer the question.

Q. (Continuing.) I call your attention to the script on page 254 "or whom he might elect." What have you to say as to whether the witness gave that testimony or not?

A. That statement wasn't made. I remember that at the time, when the correction was made. I happened to notice that correction at the time.

By Mr. BICKFORD.—Now, I come to think of it, that is what I had particularly in mind.

Cross-examination waived.

———.

Subscribed and sworn to before me this ——— day of July, 1902.

By Mr. WALSH.—The defendant now rests his case.

STIPULATION.

It is hereby stipulated and agreed that the time within which the complainant is to put in its testimony shall not commence to run until the 28th day of July, and that it shall then continue until the end of the time fixed by the rules of the Supreme Court of the United States.

Thereupon the hearing was adjourned until the 28th day of July, 1902, at ten o'clock A. M.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

July 28th, 1902, at ten o'clock A. M.

The hearing was resumed pursuant to adjournment.

HENRY C. STIFF, a witness heretofore sworn upon the part of the defendant, was recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. I show you, Mr. Stiff, the original subpoena that was issued out of this court, and ask you if you received a copy of the same through a deputy United States Marshal? A. I did, yes, sir.

Q. And in obedience to the mandate therein you are here? A. Yes, sir.

Q. Have you the document therein referred to, or any of them? A. I have not.

Q. You remember in your former testimony that you said that you had received at the time of the settlement of the suit between Mr. Griswold and Mr. Cobban, the original contract, and the original statement of account?

A. I don't think I so testified, Mr. Maynard—that I received it.

Q. Well, what is the truth, or did you not receive it?

A. I received it at the time of the trial.

Q. At the time of the settlement of the suit?

A. I didn't receive it at that time. I wasn't in court, and I think I so testified, the other time that I was upon the witness-stand—that I was not present in court at the time the case was disposed of.

(Testimony of Henry C. Stiff.)

Q. Well, I don't mean just at the time—in court just at the time, but I mean at or about the time of the settlement of the suit, you knew of the delivery over of the original contract to Mr. Cobban, did you not?

A. Well, if you will permit me to answer, I will say this: That the contract referred to was to come into the possession of the firm of which I am a member, Marshall & Stiff. I haven't seen the contract, though, I would say for some months. After receiving this subpoena, I made some effort to find it. My impression was that Mr. Marshall last had it. Mr. Marshall was away until yesterday, when we were both subpoenaed, and we talked the matter over, and his impression was that he at no time—that he had handed it to me. I wasn't able to find the contract, though, but I think it must be about our office; and Mr. Marshall will make a further investigation to see if he can find it, and if it can be found, why, he will bring it with him. Allow me to say in this connection—I don't know whether you care to have this go into the record or not—but Mr. Marshall was served with a subpoena yesterday, as I stated. He had been out of town, and only returned just before that. I told him of the fact; and he has made some arrangements with some parties, and it would have been very inconvenient for him to have come over here yesterday, so he told me that he would come over on the next train this afternoon. He will make a further search, and I think with the assistance

(Testimony of Henry C. Stiff.)

of our stenographer we may be able to find the paper referred to. Our stenographer was not accessible yesterday and we could not get him to assist in the search; but we went over the papers, and were unable to find it. I think, however, with the assistance of the stenographer we may be able to find it.

Q. Is the same testimony that you have given applicable to the original statement of account?

A. I have no recollection about that, Mr. Maynard, except this. I remember that there was, during the prosecution of that trial in the District Court of Missoula, some statement of account which I understood was claimed, and perhaps was admitted that Mr. Cobband had furnished to Mr. Griswold. But I have no knowledge whatever concerning that. I don't believe I ever saw that, or knew anything about it, after the time it was used upon the trial. As I say, I wasn't actually present in court at the time the case was disposed of in the court, and I couldn't say just exactly what papers were delivered. I know that they were not delivered to me, and I have no recollection, during that hearing, of seeing these papers referred to; and as to having them in my possession, I am quite positive that I did not, and I never did know anything about them.

By Mr. MAYNARD.—Very well, that is all.

STIPULATION.

It is hereby stipulated and agreed between the parties that the testimony of the witness, Henry C. Stiff, after the same has been transcribed, may be read over by the Examiner, and corrected by him, and when so read over and corrected, shall have the same force and effect as if the same had been read over, corrected, and subscribed by the witness.

I hereby certify that I have read over the testimony of the witness, Henry C. Stiff, as transcribed, and that the same is correct.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

DAN McGILIS, a witness called on behalf of the complainant, after being duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. McGilliss, are you an unmarried man?

A. Yes, sir.

By Mr. WALSH.—Now, just one moment. Before proceeding further with the examination of this witness, I desire to inquire of counsel of the Government what he expects to prove by him.

By Mr. MAYNARD.—Why, he was one of the entrymen that was named in the bill of complaint, and that we were not able to find; and under the stipulation in this case, we now call him to testify as to his entry, the

(Testimony of Dan McGilis.)

same as the others that have been called—the other entrymen that have testified here.

By Mr. WALSH.—The testimony then that you expect to get from this witness will be of the same character as that that was given by the other entrymen and entrywomen, examined by you on behalf of the Government, and on its testimony in chief.

By Mr. MAYNARD.—Yes, sir.

By Mr. WALSH.—Then, if the Court please, we object to that for the reason that the testimony is not rebuttal. And we don't desire to make the objection simply upon that ground, but there are here some four or five persons, who I presume counsel intends to call to give testimony of like character with that of the entrymen and entrywomen whose entries are referred to in the bill of complaint, and we ask the Master at this time either to exclude the testimony so offered by counsel for the Government, or certify the matter up for consideration by the Court; and meanwhile the further examination of witnesses of this character be suspended. I desire in this connection, also, if the Court please, to state that the examination in our judgment has already gone to most unreasonable length, and we don't feel that in justice to the defendant we ought to be called upon to permit the case to be reopened at this time. We make the further objection to this testimony, if the Court please, that the time within which the Government may put in its testimony in chief, has

(Testimony of Dan McGilis.)

expired, and it has no right now to put in any testimony at all except what is strictly in rebuttal.

By Mr. MAYNARD.—I say in answer to the objection of my learned friends, that it was expressly covered by a stipulation made and entered into between the parties to this controversy, in and by their respective solicitors, that upon the close of the defendant's case, the Government would enter into the introduction of its testimony in rebuttal; that prior to its entering into its rebuttal testimony, it should have the opportunity of calling such of the entrymen and entrywomen, who were unable to be found during the time that the Government was putting in its case in chief; and it is by reason of that stipulation that the agreement that was made and entered into between the gentlemen and myself, that those witnesses are called.

By Mr. WALSH.—I say in answer to the remark of counsel for the Government that he states the stipulation exactly as it was, that if at the close of the testimony of the defendant, any of these entrymen could be present, and counsel for the Government desired that we would consent that they be examined before we closed our case. But the defendant has closed his case sometime since, and these entrymen and entrywomen were not here, and were not examined, and we deny the right of the counsel for the Government under the stipulation referred to, to examine the witnesses present.

(Testimony of Dan McGilis.)

By Mr. BICKFORD.—In addition to what was said at the time the permission was given, on the 14th or 15th of the present month, and to the 25th of the present month, an adjournment was taken for the express purpose of meeting at this time the testimony of the defendant, and it was to be rebuttal testimony.

By Mr. MAYNARD.—It is impossible for me to conceive how intelligent gentlemen like counsel for the defendant could be parties to such a controversy as this, assuming that they were honest and that there could be such a decided misunderstanding in regard to the stipulation.

By Mr. WALSH.—It seems equally strange to us that counsel for the Government should make the contention that he does under the facts.

By Mr. MAYNARD.—How could it be possible for us to know just when the defendant would rest its case? And of what use would it be to inquire of the defendant's counsel when they would be likely to close. It must be remembered that these witnesses were to be subpoenaed, and under that stipulation as construed by the defendant, they would have to be here possibly for weeks, at great expense to themselves, and to the Government, watching the hour when the defendant would announce that they would rest. What the Government insists is that under the stipulation, that after the counsel for the defendant announced that they rested their case, that then a reasonable time would be

(Testimony of Dan McGilis.)

given me to put subpoenaes in the hands of an officer to get these witnesses here. And immediately after that was done, a week's adjournment was to be had, to enable the officers of the Government to go to the remote parts of this great State, to the homes of these entrymen and entrywomen and bring them here; and it is in exact accordance with the stipulation, and in exact accordance with the agreement which was made, and entered into at the time.

The stipulation referred to, found on page 3551 of the record in this case, was thereupon read by Mr. Maynard.

By Mr. WALSH.—There was no question about the stipulation at all. At that time we were in Butte, and were going to take the testimony on behalf of the defendant, and Mr. Maynard wanted to know from me if they would have the right to put in the testimony of those witnesses, and I told him that if any of the witnesses were present at the time we closed our testimony, that I should not object to their being examined. But I did not expect that he would call these witnesses at this time.

By the EXAMINER.—I haven't the power to make a ruling that would be binding upon the parties, except to make a ruling requiring the examination of the witnesses referred to to proceed.

By Mr. WALSH.—If that is the case, we desire to ask the Examiner to suspend the hearing until we can present the case to the Court, and have the question de-

(Testimony of Dan McGilis.)

termined as to whether or not counsel for the Government has the right to put in the testimony he desires.

By the EXAMINER.—I am satisfied that under the stipulation as it is worded in this case, that the Government has the right to go on with the examination of the witnesses present, being entrymen and entrywomen that have not heretofore been called. Your exceptions are saved so that you will get the benefit of it.

Q. How old are you, Mr. McGilliss?

A. I don't know just my exact age, somewheres about 36, somewheres along in there.

Q. Where are you living now?

A. I am living at Sunset now.

Q. Where?

A. At Sunset, in Deer Lodge County.

Q. What is your business; that is, what do you do?

A. I generally work in the timber, in the woods; sometimes work in the timber and in the woods, and sometimes I work in the mines.

Q. As a day laborer? A. Yes, sir.

Q. Where were you living on or about the 24th day of October, 1899?

A. When I proved up on this timber claim, do you mean?

Q. Yes, sir.

A. I was living at Clearwater.

Q. What were you doing there?

A. I was working in the timber—in the woods.

Q. Were you acquainted with Stephen Tepper?

(Testimony of Dan McGillis.)

A. Yes, sir.

Q. What was he doing at that time?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to the issues in this case, and not rebuttal.

By the WITNESS.—Do you want me to answer?

By the EXAMINER.—Yes, you can answer after the objection has been recorded.

A. He was running a saloon at Clearwater.

Q. And was there a boarding-house in connection with it? A. Yes, sir.

Q. Were you acquainted with Mr. Griswold at that time? A. Yes, sir.

Q. How long had you been acquainted with him at that time?

A. Well, I knew him ever since he came to the Blackfoot country.

Q. Did you work for him a portion of that time?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to the issues in this case, and not rebuttal.

A. I didn't work for him that fall.

Q. No, no, but I mean some time during your acquaintance with him?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial to the issues in this case, and not rebuttal.

A. Oh, yes, I worked for him.

(Testimony of Dan McGilis.)

Q. I show the witness, complainant's exhibit No. 42. This is—

A. I couldn't read that anyhow.

Q. What is that?

A. I say I couldn't read that anyhow.

Q. This is a certified copy of the deed which you gave to Mr. Cobban of the land which you took up?

A. Yes, sir.

Q. This is in evidence in the case; and I just wanted to show it to you, to recall your mind to that transaction. A. All right.

Q. Will you please state, Mr. McGillis, in your own way, how—what you did, in and about this stone and timber claim that you took up?

A. Well, Mr. Tepper was locating people to take up timber claims, and I told him I would like to take up a claim for myself; so he located me. And I went down to see Mr. Cobban to see if I could get the money to prove up with. He told me he would give me the money to prove up on the claim with.

Q. Then what did you do?

A. Well, it was advertised.

Q. What is that?

A. He had to advertise it sixty days, or ninety days, just how long I couldn't say. At the end of 60 days or 90 days, whichever it was, why I proved up on the claim.

Q. Then what did you do?

A. Well, I sold it to Mr. Cobban.

Q. How long after you had proved up?

(Testimony of Dan McGilis.)

A. That same day.

Q. What is that? A. That same day.

Q. And how much money did Mr. Cobban pay you?

A. He paid me $145.00.

Q. One hundred and forty-five dollars?

A. Yes, sir.

Q. And did you know—when did you know you were to receive this money, Mr. McGillis, this $145.00?

A. Well, there wasn't anything said about that.

Q. There wasn't anything said about that?

A. There wasn't anything said about that.

Q. What?

A. There wasn't anything said about that.

Q. Did you know how much you were to get for your land before you went to prove up?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, and entirely outside of the issues in this case; and leading.

A. Yes, sir.

Q. Who told you? A. Mr. Cobban.

Q. When did he tell you that?

A. Well, whenever—whenever I went to see him first.

Q. When you went to see him first?

A. Yes, sir.

Q. And was that before or after you filed?

A. That was before I filed.

Q. And what did Mr. Cobban then tell you?

By Mr. WALSH.—We object to that also, upon the ground that it is hearsay, and for the further reason

(Testimony of Dan McGilis.)

that it is irrelevant and immaterial to the issues in this case.

A. Well, I told you what he told me.

Q. Before you filed he told you that he would give you the hundred dollars, and the expenses, $145.00; that was it, was it?

By Mr. WALSH.—We object to that as being leading.

A. Well, he gave me $145.00 for my claim, after paying for it.

Q. What? A. He paid me $145.00.

Q. After you proved up? A. Yes, sir.

Q. And do I understand you to say that he told you he would that before you filed? A. Yes, sir.

Q. You may state further.

(Mr. Griswold, who was sitting near counsel for the Government spoke to Mr. Maynard in an audible tone.)

By Mr. WALSH.—If there is any other counsel in this case, I would like to have his name entered. The counsel for the Government is presumed to know enough to conduct his own case.

By the EXAMINER (To Mr. Griswold).—Yes, you must make suggestions so that they cannot be heard.

By Mr. MAYNARD.—I desire to say right here, and to have it recorded in the record, that the Government's counsel acknowledges himself under great personal obligations to Mr. Griswold for many facts and circumstances connected with these various transactions, by which he has been enabled to know the facts and circum-

(Testimony of Dan McGilis.)

stances which he would otherwise have no knowledge of. And if Mr. Griswold has spoken a little louder than he expected, it was an inadvertency on his part.

Q. —as to just how, Mr. McGillis, you went to see Mr. Cobban at this time—at this first time. How did you happen to go to see him?

A. I was informed by Tepper, Mr. Tepper.

Q. What were you informed by Mr. Tepper?

A. Why, that I could get the money to prove up with that I could borrow the money to prove up on my claim with.

Q. And what was the purpose, that Mr. Tepper had informed you—what was the motive that made you go to Mr. Cobban?

A. Well, I wanted to take up a timber claim. Everybody was taking up timber claims then.

Q. I call your attention to the question as to whether or not after Mr. Tepper had so told you, you went to see Mr. Cobban, to know whether that was true or not, what Mr. Tepper had told you? A. Yes, sir.

Q. Did you have any money to speak of at the time, to buy that land with?

By Mr. WALSH.—We object to that as leading.

A. No, I didn't have money to buy it, no.

Q. You may state as to what expenses you incurred, if you remember, Mr. McGillis?

By Mr. BICKFORD.—We object to that because it is leading in the first place, and further it is irrelevant and immaterial, and not proper rebuttal testimony.

(Testimony of Dan McGilis.)

Q. Do you remember of any expenses that you paid out to make the proof, to make up this $145.00?

By Mr. BICKFORD.—We object to that also, as being irrelevant and immaterial, and leading.

A. I paid it to my witnesses.

Q. You mean you paid your witnesses out of that?

A. Yes, sir.

Q. Well, who gave you the names of the witnesses, Mr. McGillis?

By Mr. BICKFORD.—We object to that because it assumes that he did something that does not appear in the testimony in this case.

Q. Who gave you the names of your witnesses?

A. Who were they, do you mean?

By Mr. MAYNARD.—I will withdraw the question.

Q. Do you remember who your witnesses were, Mr. McGillis?

A. Stephen Tepper, and Charlie Good, or Hood, I am not sure which. Hood, or Good, I am not sure which; they were my witnesses.

Q. Well, do you happen to remember the names of the other two witnesses that were published in the newspapers? A. Yes, sir, I think I do.

Q. Who were they?

A. Ambrose Martin and Bill Grant, I think, I wouldn't be sure.

Q. Yes, that is right. The record shows that those were your witnesses; the record shows that Charles

(Testimony of Dan McGilis.)

Good and William Grant, and Ambrose Martin, and Stephen Tepper were named as witnesses.

A. Yes, sir.

Q. Can you state how they happened to be named as your witnesses; How did they happen to become your witnesses?

A. Well, I asked them to be witnesses for me.

Q. You did, did anybody tell you to do that?

By Mr. BICKFORD.—We object to that upon the ground that it is leading, and hearsay, and it is also irrelevant and immaterial.

A. Well, they told me that I would have to have witnesses.

Q. Who told you that?

By Mr. BICKFORD.—We object to that upon the ground that it is leading and hearsay, and it is also irrelevant and immaterial.

A. Steve Tepper.

Q. Who did you go out on this land with?

A. Steve Tepper.

Q. And how far was that from Clearwater?

A. It took a day to go up there and back.

Q. Did anyone else go with you?

A. Steve Tepper, I told you, went with me.

Q. Yes, but did anybody else go with you besides Steve Tepper? A. No, sir.

Q. How far would you say that was from the Clearwater?

(Testimony of Dan McGilis.)

A. I don't know; I should say about twenty miles, as near as I could judge.

Q. Had you been up there before to look at this piece of land? A. Not before this time, no, sir.

Q. And did you go up there after that?

A. Yes, sir.

Q. When?

A. I was up there about a week before I proved up, I should judge.

Q. What did you go up there for then?

A. I went up there to see if there was anybody on it.

Q. Who informed you that anyone—who informed you, if anyone, that this piece of land was open to entry?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial.

A. To file on it?

Q. Yes, sir. A. Well, Steve Tepper.

Q. He told you that that was open?

A. Yes, sir.

Q. Do you know whether this location that you took up, when you say you went with Steve Tepper, was a part of the land that had been selected by Mr. Griswold?

By Mr. WALSH.—We object to that for the reason that it is leading.

A. I don't know anything about it.

Q. Whom did you go up there with the second time?

(Testimony of Dan McGilis.)

A. I went up there alone.

Q. You just went up there alone? A. Yes, sir.

Q. Did you go to Missoula alone to file?

A. The first time or the last time?

Q. When you went the first time?

A. I went alone.

Q. Did anyone give you the description of the land, and the names of the witnesses, with information that you had to give to file with?

By Mr. BICKFORD.—We object to that because the question has already been asked, and answered by the witness heretofore in his examination, and because it is irrelevant and immaterial.

By the EXAMINER.—Now, you may answer the question.

A. I got my own witnesses.

Q. Yes, and the description from Tepper, did you say?

By Mr. WALSH.—We object to that as being leading.

A. He gave me—I got the descriptions—he located me there then.

Q. And gave you the descriptions?

By Mr. WALSH.—We object to that also as being irrelevant and immaterial, and leading.

A. Yes, sir.

Q. And on what was this description written, Mr. Gillis?

(Testimony of Dan McGilis.)

By Mr. BICKFORD.—We object to that for the reason that it assumes a state of facts not testified to by the witness, viz., that the descriptions were written on something, and the testimony does not show such to be the fact.

A. I didn't have any writing from Mr. Tepper.

Q. You say you went alone when you filed?

A. Down to Missoula?

Q. Yes, down to Missoula?

A. Yes, that is right; I went alone the first time.

Q. What is that?

A. I think I was alone the first time.

Q. Who did you go to see when you went alone the first time? A. Mr. Cobban.

Q. And were there any writings drawn up at that time? A. No, sir.

Q. Well, who went to the land office with you, if anyone, the first time?

A. I forget. I forget now, I forget all about it.

Q. As a matter of fact, Mr. McGillis, you had to file a statement, which was to contain a description of your land, together with the names of your witnesses; and what I am trying to ascertain is, where you got this description from, and you said you got it from Stephen Tepper. Now, what I want to know is, did you carry that description which he gave you, in your head, or on a piece of paper?

By Mr. WALSH.—The witness has testified that

(Testimony of Dan McGilis.)

Stephen Tepper gave him nothing on a piece of paper; and the question of counsel assumes a fact directly opposite to what the witness has testified to, and further it is not proper rebuttal testimony.

A. Well, I got the numbers of the quarter sections from Mr. Tepper.

Q. And what were—were the numbers on a piece of paper or not? A. Yes, sir.

Q. And what did you do with that piece of paper?

A. Well, I forget now what I done with it, I couldn't say.

Q. Do you know who you gave the paper to?

A. Well, I cannot say. I cannot remember that now.

Q. And you, as I understood you, a little while ago, when I went to show you the deed, you said you couldn't read? A. No, sir.

Q. So you wouldn't be able to know just exactly what was on the paper that Mr. Tepper gave you?

A. Figures was all that there was on it.

Q. There might be some names written on there, might there not, with the numbers that were on the paper?

By Mr. BICKFORD.—We object to that because it is an assumption of counsel, and an effort upon the part of counsel for the Government to lead his witness, and put words into his mouth, directly contrary to what he has testified to, and also an effort upon the part of

(Testimony of Dan McGilis.)

counsel to make the witness say that which he doesn't know anything about.

A. Not that I know of, I couldn't say whether there was or not.

Q. And how long was it before this that you began—when you went down to file, that you had seen Mr. Cobban, did you say?

A. Well, I told you before I had seen him, that I wasn't acquainted with him.

Q. I meant, told you that you would get acquainted with him, with reference to your filing?

A. That was when I first filed on this claim.

Q. At the same time that you filed you first saw Mr. Cobban? A. Yes, sir.

Q. And then he said that when the time came, he would loan you the money to prove up on?

By Mr. BICKFORD.—We object to that as leading, and further that it is irrelevant and immaterial. I don't think it is fair to put words into the mouth of the witness this way at all.

By Mr. WALSH (To the Witness).—You needn't mind answering that question, Mr. McGillis.

Q. Do I understand you to say that it was at this time, that you filed, that you had that conversation with him that you have testified about?

A. I filed after I had seen Mr. Cobban.

Q. Filed after you had seen Mr. Cobban?

A. Yes, sir.

(Testimony of Dan McGilis.)

Q. Now, was that the first time that you had ever seen him to have any other business with him?

A. Yes, sir.

Q. And you were alone in the office with him?

A. Yes, sir.

Q. You may state whether or not you saw him after that day?

A. I wasn't in town until the day I made the proof.

Q. Did you see him between those two dates?

A. Which two dates?

Q. Between the dates that you filed, and the day you made your final proof?

A. I didn't see him on the day I filed—from the day I filed until the day I proved up. I left down there and didn't come back until the day I proved up.

Q. You may state as to whether or not between the times of your filing, and the times of your proving up, whether you were called upon to do anything in regard to the matter at all, in any way; did you do anything in regard to it?

A. I don't understand you.

Q. I say, did you do anything at all with reference to your claims between these two dates?

A. Which two days?

Q. Between the date of your filing, and the date of your making final proof?

A. No, sir, I didn't do anything; that is the law didn't require anything to be done.

(Testimony of Dan McGilis.)

Q. Do you know anything about the final proof, the witnesses how they came to the office, or anything about it? A. Which proof?

Q. The proof, the final proof, the advertising in the papers, and so on?

A. What office do you mean?

Q. The land office, do you know anything about that; about any advertising in the papers?

A. Well, I didn't do any advertising in the papers.

Q. You may state if you didn't pay for that, and what you did pay for it?

A. Why, I paid for my witnesses.

Q. Well, what did you pay out?

A. Me, do you mean?

Q. Yes, what did you pay out for your witnesses?

A. I paid $40.00.

Q. For what purpose did you pay $40.00?

A. For witnesses, for proving up.

Q. For your witnesses, you mean? A. Yes, sir.

Q. Who did you pay your money to?

A. Gave it to Steve Tepper, and Charlie—

Q. Charlie Good? A. Yes, Charlie Good.

Q. Do I understand that this is all the money you paid out from the beginning to the end for any purpose?

A. Yes, sir.

Q. Do you know who paid the money into the land office, that paid for the land; did you pay it yourself?

A. No, I didn't. I didn't see it paid.

(Testimony of Dan McGilis.)

Q. How long after you proved up, was it, Mr. McGillis, before you went to Mr. Cobban's office?

A. I went to his office right after I proved up.

Q. Do you remember who was with you?

A. At the land office at that time?

Q. At the land office, yes. At the time you proved up, was anybody with you besides your two witnesses?

A. No, that is all, that is all I had with me.

Q. Was there anybody there at Mr. Cobban's office with you?

A. Not when I was proving up, not that I remember of.

Q. You say that you went to Mr. Cobban's office, after you had proved up, whom did you go with?

A. I went alone.

Q. Why did you go to Mr. Cobban's office?

A. I had to get money to pay for the land.

Q. Who did you see at Mr. Cobban's office?

A. He was the only man that I knew.

Q. Do you remember of seeing a paper there when you went into the office that you signed?

A. Into Mr. Cobban's office?

Q. Yes, sir. A. No, sir.

Q. Well, what did you do there?

A. Well, I just told you a minute ago I went to get some money to pay for my land.

Q. What money was that that you wanted to get?

By Mr. BICKFORD.—Well, he has said that it was money to pay for his land.

(Testimony of Dan McGilis.)

Q. After you had proved up, and you had left the land office, you went to Mr. Cobban's office to get what money?

A. To pay for the land. He loaned me the money.

Q. To get what?

A. To get money to pay for my land. He loaned me the money to pay for the land.

Q. That had already been paid into the land office, hadn't it? A. Before I proved up?

Q. Yes, sir. A. I don't know.

Q. Well, did you get the money from him to pay for the land? A. No, sir, he paid it himself.

Q. Well, what money did you get from him?

A. I got $145.00 from him.

Q. And how long was it after you had proved up that you got this $145.00?

A. Somewhere in the neighborhood of three hours.

Q. Did you know how the money, the $400.00 that you paid for the land, got to the land office, who took it there?

A. I cannot say, no, sir, I don't know.

Q. You said that at the time that you located, there were a large number of people that were taking up timber claims? A. Yes, sir.

Q. Do you know for what purpose they were taking up timber claims? A. No, sir, I do not.

(Testimony of Dan McGilis.)

Cross-examination.

(By Mr. BICKFORD.)

Q. You have lived in Missoula and Deer Lodge County for some years, haven't you, Mr. McGillis?

A. Not so very much in Deer Lodge County. I have lived in Missoula, Missoula County.

Q. How long have you lived there? A. Where?

Q. In Missoula County?

A. I have been there since 1883. Somewhere along there, 1883 or 1884.

Q. And during all of that time you have been engaged in either the business of mining or lumbering?

A. Yes, sir.

Q. How long have you been engaged in the country along the Blackfoot river—how far up?

A. Well, any distance from Bonner up.

Q. Or from Bonner, Mr. McGillis, along up to the head of the river?

A. Oh, I have been on that river for ten years.

Q. You don't know when you first went to Missoula County then, whether anybody was working up there then?

A. No, there wasn't anybody working on it then.

Q. I think there was, too, I think they commenced there in 1883?

A. No, when I was in Missoula first there wasn't.

Q. Then you didn't go onto the Blackfoot river until you had been in Missoula County some time?

(Testimony of Dan McGilis.)

A. No, sir.

Q. Where were you when you first went into Missoula County, what part of the country?

A. When do you mean?

Q. When you first went there, in 1883 and 1884?

A. I was working on the railroad.

Q. West of town?

A. No, east of Missoula.

Q. East of Missoula? A. Yes, sir.

Q. Now, you appear to be anxious to tell the truth, and to be candid in this matter; as a matter of fact, you knew when you went to the land office to file upon this land, that certain things were required by law; and among other things, that you must be a citizen of the United States, you knew that, did you not?

A. Yes, sir.

Q. And you knew that you had to be over the age of twenty-one years, did you not?

A. What is that?

Q. You knew that you had to be over twenty-one years of age? A. Yes, sir.

Q. Now, at the time that you went to file on this land, in the United States land office, you were a citizen of the United States, were you not?

A. I guess I am.

Q. You were over the age of 21 years then, were you? A. Yes, sir.

Q. And at that time had you ever made an entry

(Testimony of Dan McGilis.)

under the timber and stone laws of the United States, before that time? A. No, sir.

Q. That was the first entry then that you had ever made under the Stone and Timber Act?

A. Yes, sir.

Q. Now, at the time when you made your filing in the land office, you were required to file what is known as a sworn statement. Do you remember having filed such a paper as that?

A. I don't know, I couldn't say.

Q. Well, do you know that you filed any paper in the land office? A. Yes, I filed a paper.

Q. You signed your name to a paper at that time, did you not?

A. I cannot remember, it is quite a long while ago.

Q. Well, don't you remember of the fact of a paper having been filed, after it was filled out, and you having signed your name to the paper, and it having been read over to you by the land officers?

A. I couldn't say for sure; I cannot remember about that.

Q. Now, the statement which I refer to, as one which is required at the time when you make your entry of the land under the Stone and Timber Act would be in the following form: "I, Dan McGillis" (this would be the way the paper would be prepared in the land office), "of Clearwater, in the county of Deer Lodge, State of Montana, desiring to avail myself of the provisions of the act of Con-

(Testimony of Dan McGilis.)

gress of June 3, 1878, entitled, 'An act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, as extended to all of the public land States by the act of August 4th, 1892,' for the purchase of the tract of land, describing it by subdivision, in the district of lands subject to sale, at Missoula, in the county of Missoula and State of Montana, do solemnly swear—" that is the way your entry was, was it not? A. Yes, sir.

Q. —"that I am a native citizen of the United States, of the age of" 36 years?

A. Somewhere along in there. I don't think that is just my exact age, but somewhere right along there.

Q. —"and that I am by occupation" a laborer; "that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its stone and timber." That is the way it read, isn't it? A. Yes, sir.

Q. "that it is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal; that I have made no other application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Gov-

(Testimony of Dan McGilis.)

ernment of the United States, may inure in whole or in part to the benefit of any person except myself; and that my postoffice address is Clearwater, Deer Lodge County, Montana." Do you remember of having signed such a statement as that at the time you made your entry in the land office?

A. There is some of it there right that I know.

Q. Now, I will give this particularly as you stated it. You were sworn, or something at the time when you made your filing, weren't you? You remember the fact of having been sworn or something at the time you filed on the land?

A. Swore that it was not farming land.

Q. You swore to some of these facts at that time, did you not?

A. Well, that is what I was supposed to swear to.

Q. Well, you swore that the land was chiefly valuable for the timber on it?

A. For timber and stone.

Q. You swore that it was more valuable for timber and stone than for farming land?

A. More valuable for timber and stone than for anything else.

Q. Well, then, having sworn to something in the land office at the time that you made your filing, that statement that you swore to at that time was true, was it not? A. Well, I guess it was.

Q. Yes, sir.

(Testimony of Dan McGilis.)

A. Yes, sir, as near as I know.

Q. Now, you didn't go to the land office for the purpose of committing perjury, did you?

A. No, sir, I did not.

Q. You didn't intend at that time to violate any law of the State of Montana, or of the United States in acquiring title to this land?

A. No, sir.

Q. Well, that being true, that an affidavit was signed by you and sworn to by you, you would say at that time, that the affidavit so made by you was true at that time?

A. I don't say that.

Q. You don't say that? A. No, sir.

Q. Then if it wasn't true, you were there prepared to swear to anything in order to get title to that land, was that it? A. No, sir.

Q. It was not? A. No, sir.

Q. Well, now, what is the fact with reference to that matter?

A. I don't understand what you are getting at.

Q. I simply want to understand whether or no you told the truth, swore to the truth at the time that you made your filing, or whether you swore to something that was false, Mr. McGillis?

A. I didn't swear to anything that was false. If I signed any papers there, I didn't know what they were.

A. I don't care about the signing so much as I do the swearing. What I want to know is, did you at

(Testimony of Dan McGilis.)

the time when you made this filing in the land office at Missoula, Montana, did you swear to a statement that was not true; or was the statement that you then swore to, true? A. What was the statement?

Q. I have just read it to you.

A. About the stone and timber.

Q. Yes, sir.

A. The Stone and Timber Act I swore to it.

Q. The Stone and Timber Act was the one that you took the land up under. You do solemnly swear, you said in this affidavit that you made in the land office at Missoula, that "I am a native citizen, or a naturalized citizen of the United States." A. That is right.

Q. That is right, is it? A. Yes, sir.

Q. "And my age was 33 or 34 years," you said at that time? A. Somewhere along there.

Q. That you was by occupation a laborer, did you swear to that? Yes, sir.

Q. That you have personally examined the land. That was true too, was it not?

A. Yes, sir.

Q. From your personal knowledge you stated that the land was unfit for cultivation, did you not?

A. Yes, sir.

Q. Well, was that true?

A. That is true in my judgment.

Q. Yes, in your judgment. And valuable chiefly for the stone and timber; for the stone and timber upon it?

A. That is right.

(Testimony of Dan McGilis.)

Q. That was right, was it not? A. Yes, sir.

Q. You also swore that it was uninhabited, didn't you? A. Yes, sir.

Q. And that it contained no mining or other improvements?

A. Yes, sir. No, I don't know anything about that.

Q. Well, was it true, if you said it contained no mining or other improvements?

A. Well, I said I didn't know anything about any mineral in it. They asked me about that.

Q. Then you told the truth, did you?

A. I told the truth. I didn't know of any mineral in it.

Q. Then you examined the land, and you found no evidence of any minerals in the land, didn't you?

A. I didn't know of any mineral in the land.

Q. And you also swore, "Nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal." A. Not that I know of.

Q. That was true as far as you know, wasn't it?

A. That was true, yes, sir.

Q. "That I have made no application under said act." That was true, was it?

A. I don't know whether they asked me that or not.

Q. That you had never made any other entry under the Stone and Timber Act, that was true, was it not?

A. I don't know whether they asked me that or not.

Q. Well, I am reading you this, and I ask you

(Testimony of Dan McGilis.)

whether it was true or not. And whether they asked you whether that statement was true or not?

A. I don't know.

Q. Well, can't you tell whether you had made any other application under that Stone and Timber Act or not?

A. Whether I had ever taken up any stone and timber claim?

Q. Yes.

A. I had never taken up any other stone or timber claim.

Q. That is the only stone and timber claim that you ever took up? A. Yes, sir.

Q. Then the statement in this particular—the sworn statement of yours was true, was it not?

A. Yes, sir.

Q. That you had made no other application under the act, was that true, or was it not true?

A. Well, the words that you ask me there are true, all right.

Q. Well, that is exactly what I want you to say, whether it was true, or whether it was not.

A. I don't understand.

Q. This statement that you made. Had you made any other application under said act, was that true?

A. I don't understand what you mean.

Q. Well, was it true that you had made an application under the Stone and Timber Act before that time?

(Testimony of Dan McGilis.)

A. Before which time?

Q. Before the time you went to the land office at Missoula and filed on this particular tract of land?

A. Had I filed upon it?

Q. Yes, had you filed upon that particular tract of land that you testified that you had filed on?

A. Yes, I filed upon it.

Q. Well, had you ever filed upon any one before that?

A. I have told you before.

Q. Well, why can't you answer my question, when I read it from the affidavit filed in the land office, and ask you whether the statement contained in that affidavit was true or not?

A. I guess it was all right.

Q. Well, can you say that it was, or that it was not?

A. No, what I filed on first was right.

Q. The statement that you made when you filed was right, was it? A. Yes, sir.

Q. That was true, was it? A. Yes, sir.

Q. Well, "I don't apply to purchase the land above described on speculation." Now, was that true?

A. I took it up for my own benefit.

Q. "That I don't intend to purchase the land."

A. Well, I took it up for my own benefit.

Q. Then that statement contained in the sworn affidavit was true, was it?

A. I don't understand that.

Q. "That I don't apply to purchase the land above described on speculation; but in good faith, to appro-

(Testimony of Dan McGilis.)

priate it to my own exclusive use and benefit." Now, was that statement true?

A. I took the claim up for my own benefit.

Q. Was that statement true?

A. As near as I know, I guess it was.

Q. Well, was that statement true or not?

A. That I took it up for my own benefit?

Q. Yes, sir. A. Yes, sir.

Q. The following is found in the affidavit also: "And that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except myself." Now, was that true?

A. I don't know anything about that.

Q. Was that true, or was it not true?

A. No, sir, not that I know of. Will you read it over again, if you please.

Q. "And that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except myself."

A. That is all that I took it up for, myself.

Q. Then the statement that you made was true at the time that you made it at the land office, at the time of your filing, was it?

(Testimony of Dan McGilis.)

A. I didn't have any contract, and no paper drawed up with no man.

By Mr. MAYNARD.—What did you answer?

By the WITNESS.—He asked me if I had made any contract, with anybody, or had a contract drawed up with anybody.

Q. Well, was this statement as made by you at the time you made your filing, true?

A. I cannot understand that.

Q. Now, I will read it to you again. "That I have not directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States, may inure, in whole or in part, to the benefit of any person except myself." Now, was that true or not?

A. I don't know anything about that.

Q. Well, now, was the statement that you made out at the land office at the time you made your filing true or not? Was that statement true or false?

A. Was that question asked me?

Q. That was asked you. Was it true?

A. Yes, sir.

Q. Did you tell the truth then or not?

A. Yes, sir.

Q. Then, as I understand you, you went back up the river after you had filed on this land, you went back up the river, and didn't come back to Missoula again, as

(Testimony of Dan McGilis.)

I understand you, until the time when the date for the final proof came? A. That is all right.

Q. On the day when you were to make final proof, you went to Missoula with your witnesses, and appeared in the land office? A. Yes, sir.

Q. Well, having appeared in the land office, and before the officers of the land office there, certain questions were asked you, and certain answers were given by you?

A. Yes, sir.

Q. And the questions that were asked, you answered, and after that was all done you signed your testimony, and your final proof was completed, after the testimony of your witnesses had been taken. You remember that fact, do you not? A. Yes, sir.

Q. And upon that occasion this question was asked you, was it not? "What is your age, postoffice address, and where do you reside? A. 34." These answers are, of course, upon this case that I have here. We haven't your final papers here, but I will just ask you the questions and you can answer the questions as you see fit, and as you would if you were in the land office. What is your age?

A. Somewheres around about 36 or 37.

Q. And your postoffice address?

A. It was Clearwater then.

Q. And where did you then live?

A. Lived on the river there, and worked on the river.

Q. Are you a native-born citizen of the United

(Testimony of Dan McGilis.)

States, and if so, in what State or territory were you born?

A. He asked me where I was born. I was born in Canada.

Q. Then you were not a native-born citizen of the United States? A. No, sir.

Q. Now, I will ask you generally, whether you answered the questions that were asked you in the land office truthfully? A. Yes, sir, I did.

Q. Now, many other questions were asked you at that time, one of which was the following: "Have you sold or transferred your claim to this land since making your final proof—since making your sworn statement, or have you directly, or indirectly, made any agreement or contract, in any way or manner, with any person, whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself"? Do you know how you answered that question?

A. Yes, sir, I told them that I took it up for my own personal benefit. I did as near as I know.

Q. You don't understand the question, Mr. McGillis. It is this: Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States, may inure in whole

(Testimony of Dan McGilis.)

or in part to the benefit of any person except yourself. This means the time that you made your sworn statement, the first time you entered the land in the land office, and the time that you made your final proof. Had you sold or transferred your land at that time?

A. No, I didn't do it because I didn't have it.

Q. Now, have you directly, or indirectly, made any agreement or contract, in any way or manner, with any person? A. Only Mr. Cobban, that is all.

Q. Well, now, have you made—you say that you hadn't sold or transferred the claim. That question is this: Have you sold or transferred your claim to this land since making your sworn statement; or have you directly or indirectly made any agreement, or in any way or manner, with any person or persons whomsoever, that the title which you may acquire from the Government of the United States may inure in whole or in part, to any person except yourself? How did you answer that question?

A. Well, I told them that I took it up for my own special benefit.

Q. That isn't the question. The question is, had you sold or transferred? A. No, I had not.

Q. The question is, how did you answer it. As you answered now, that you hadn't sold or transferred?

By Mr. MAYNARD.—Except to Mr. Cobban.

By Mr. BICKFORD.—No, he didn't say that.

By Mr. MAYNARD.—Well, that is what he said.

(Testimony of Dan McGilis.)

A. I took it up for my own special benefit. I was taking it up for myself.

Q. Answer the question, please, Mr. McGillis. Read the question again to the witness, Mr. Stenographer.

(Question repeated to the witness by the stenographer.)

A. Well, I couldn't do that before I had it.

Q. The question is, how did you answer that question? A. I don't know.

By Mr. WALSH.—The witness evidently doesn't understand the question.

By the WITNESS.—Well, I took it up for myself.

(By Mr. WALSH.)

Q. That isn't the question, Mr. McGillis, at all. Don't you understand the question? You were not asked if you took this up for your own benefit. The question was, had you made any agreement or contract, by which—with any person, either directly or indirectly in any way or manner, by which the title to the land, which you were to get from the United States, was to inure to the benefit of these persons. Do you understand that question?

By Mr. MAYNARD.—He says he don't know. I make the objection that the question is not fair to the witness; and that the records of the land office speak for themselves. Those records are on file at the land office in Missoula, and they speak for themselves. This man says that he could not read it.

Q. Very well, could you read it?

(Testimony of Dan McGilis.)

A. I cannot understand that.

By Mr. MAYNARD.—I object to that for the reason that it is unfair; the counsel has asked this question of the witness a number of times, and we object to his testimony upon that subject, for the reason that the best evidence of what he testified to, is the evidence of the written statement on file with the register and receiver at the public land office in Missoula, Montana.

By the EXAMINER.—Now, you may answer the question if you will.

A. What question is it?

Q. How did you answer the question that was propounded to you at the United States land office in Missoula, Montana, at the time when you made your final proof, upon this tract of land which I have just referred you to?

A. Well, as near as I know of what they asked me, it was whether I had made any contract with anybody for it.

Q. Yes, sir. A. Well, is that right?

Q. Yes, sir. How did you answer that?

A. Well, as near as I know that I was taking it up for my own special benefit.

Q. How did you answer the question, that is the question now? A. Just as near as I could.

Q. Did you answer that you had made no contract?

A. I had made no contract.

Q. You had made no contract to sell the land, do you mean? A. No, sir, I had made no contract.

(Testimony of Dan McGilis.)

Q. Is that your answer, that you had made no contract?

A. I don't know whether they asked me that or not.

Q. Well, if they asked you, did you answer that you had made no contract?

By Mr. MAYNARD.—I object to the question, and I want to know how far it is permitted for me to say that this witness shall not answer that question. If it has been said once, it has been said a hundred times by Mr. Walsh to the different witnesses, "You need not answer that question," and positively instructing the witness not to answer. What I say is that I have made no objection to their going to the bottom of this thing in every way, but it isn't fair to this witness to make him answer as to the contents of this sworn statement, which is on file in the Missoula land office, and is available to the defendant, and speaks for itself. It is simply testing the recollection of the witness as to facts, and I don't think the Examiner should permit that kind of a question to be asked of the witness. I call for the opinion of the Examiner upon the question.

By the EXAMINER.—In my judgment, the questions are proper enough; they test the recollection of the witness, if nothing else, and I think it is perfectly competent.

By Mr. MAYNARD.—Well, if you don't remember, you can say so, and let them bring the papers here from which you can refresh your recollection.

(Testimony of Dan McGilis.)

By Mr. BICKFORD.—Mr. Examiner, this is the third or fourth time that he has flaunted in our faces the fact that the papers are not here. Counsel for the Government understands thoroughly the proposition that at this time we don't expect to go into the case in full without the papers before us. We haven't these papers here at this time, and it will require at least twenty-four hours to get them here, and at this time, with copies of similar papers before us, we shall cross-examine the witness upon the matters involved here.

By the EXAMINER.—I think you are entitled to sufficient time to have these papers produced, and to use them in the examination of the witness.

By Mr. MAYNARD.—I desire to say that I admit what my brother Bickford has said, but that doesn't signify that I am to stand by and see incompetent questions put time and time again to the witness, and go into the record without making an objection thereto.

By Mr. BICKFORD.—Yes, but we have the right to test the recollection of the witness. We have a right to interrogate him as to what he swore to in the land office, and to test his knowledge with reference to the matter without any speech from counsel on the other side.

By Mr. MAYNARD.—Very well; we had better drop from one position and take up another, in order that if there is any significance in the fact that the papers are not here, they can wait until the papers are here, and

(Testimony of Dan McGilis.)

then interrogate the witness relative to their contents when they get here. It is incompetent for them to ask these questions relative to the contents of papers—records in the United States land office at Missoula, and it is incompetent cross-examination, for the further reason that the papers speak for themselves.

By Mr. BICKFORD.—We want to announce at this time that we propose to telephone over to Missoula for the papers in this case, and such other papers as counsel will favor us with, in order that we may use them to interrogate the witnesses that are here.

By Mr. MAYNARD.—I shall be very glad to do that, and I shall give you names of such witnesses as I have.

Q. Now, you say you don't remember how you answered the question which I read to you from the record. A. I couldn't say right now.

Q. But you do say that whatever was your answer at that time you answered it truthfully?

A. Well, as near as I know.

Q. Now, sir, there were other questions propounded to you, and among others this question: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and benefit, and not to the use or benefit of any other person?" How did you answer that question?

By Mr. MAYNARD.—I object to the question upon the ground that it is not treating the witness fairly, and upon the further ground that it is not competent for

(Testimony of Dan McGilis.)

counsel to ask the witness these questions relating to the contents of records in the United States land office without submitting them to the witness.

A. Well, I took it for myself, and I answered it that way.

Q. You answered that you had made the entry for yourself? A. Yes, sir.

Q. Well, did you answer it truthfully?

A. Yes, sir.

Q. And you were also asked this question: "Has any other person than yourself, or has any firm, corporation or association, any interest in the entry you are now making, or in the land, or in the timber thereon"? How did you answer that question?

A. I have forgotten how I did answer it.

Q. You couldn't say as to that?

A. No, sir, I could not.

Q. But whatever way you did answer it, you answered it truthfully, did you not?

A. Well, I couldn't say how I did answer it.

Q. Well, you can say whether you answered it truthfully or not, can't you?

A. I answered it truthfully as near as I know how.

Q. As near as you knew how you answered the question truthfully, is that your answer?

A. Yes, sir.

Q. Now I want to ask you generally, if at the time you went to the land office, you were there for the purpose of telling the exact truth with reference to your land

(Testimony of Dan McGilis.)

entry, and to answer the questions truthfully, that were put to you by the land officers? A. Yes, sir.

Q. You say that you went to Mr. Cobban to borrow the money with which to make your final proof?

A. Yes, sir.

Q. And you saw him about the money to make the final proof with prior to the time of your making your filing on the land? A. I don't just understand you.

Q. When did you go to see Mr. Cobban about borrowing money with which to make this filing, or this entry?

A. That was before I made the filing.

Q. What was said between you and Mr. Cobban at that time with reference to his loaning you the money?

A. He told me that he would let me have it.

Q. Did he say for how long a time he would let you have it? A. No, sir.

Q. Was there any rate of interest agreed upon between you and Mr. Cobban, Mr. McGillis?

A. No, sir.

Q. Was there anything said between you at that time with reference to the value of the timber that was upon the land?

A. He asked me how much timber was on it, and I told him between six hundred thousand and seven hundred thousand feet.

Q. Was anything said as to the value, or as to how much this timber was worth?

A. Not that I remember of.

(Testimony of Dan McGilis.)

Q. Then it was simply a question of borrowing the money so far as you were concerned with which to make your final proof?

Q. Well, that is all I asked the gentleman. That was all I went for, to get the money to prove up with. I didn't have but very few words with him at the time.

Q. Well, you said in your examination in chief—go on and tell the conversation—all the conversation that you did have with Mr. Cobban at that time.

A. When I went to file?

Q. Yes, sir.

A. Well, I just told you a minute ago.

Q. Was that all the conversation you had with him?

A. Yes, sir.

Q. You asked him then if you could borrow of him a sufficient amount of money with which to pay for this land and he said, "Yes, I will loan it to you." Was that all that was said?

A. Yes; that was all that was said then.

Q. Then at that time there was nothing said about the purchase of the land, or as to buying it from you?

A. I don't remember, if there was I don't remember.

Q. Was there anybody else there at all except you and Mr. Cobban?

A. We was talking in one corner of the room.

Q. And you had no doubt, there was no one within earshot or anyone that could overhear the conversation that you had with Mr. Cobban? A. No, sir.

(Testimony of Dan McGilis.)

Q. Well, at that time did you agree with Mr. Cobban then and there that you would sell him this land?

A. I didn't make any agreement to sell him the land; I didn't own the land.

Q. Well, when was it that you did make an agreement with him to sell the land to Mr. Cobban?

A. I didn't make any agreement to sell this land to Mr. Cobban.

Q. You didn't make any agreement to sell this land to him? A. No, sir.

Q. Then, as a matter of fact, the entry was made, and the final proof was made without any agreement between yourself and Mr. Cobban, except that he would loan you the money with which to make the final proof.

A. I guess it was his money that paid for it.

Q. Yes, it was his money that paid for it until you had borrowed it, and then it was your money.

A. Well, I didn't get the money. He paid it.

Q. He paid it in himself?

A. I guess he was the man that paid it in.

Q. Then, at the time the money was borrowed there was a bargain between you and Mr. Cobban that he should give you the money, or that he should loan you the money with which to make this final proof. Do I understand with which to make this final proof. Do I understand; am I right about that?

A. Well, that is the only words I had with him. I told you that.

(Testimony of Dan McGilis.)

Q. It was only a few words and you have told all there was to it? A. Yes, sir.

Q. You said, I believe, that there were a large number of people taking up claims. How many, do you remember, were taking up claims?

A. I couldn't tell you how many.

Q. Was there more than three?

A. There was.

Q. Three men taking up claims. Would you call three a large number?

A. No; I guess there was a hundred people taking up claims there.

Q. Well, if there was a hundred people taking up claims, how many could you name?

A. Well, I couldn't name any of them right now.

Q. Can you name one? A. Can I name one?

Q. Yes; can you name one that took up a timber and stone claim; can you give me the name of one person beside yourself?

A. Well, there was only—it was hearsay. They were all taking up claims.

Q. You don't know the name of anyone, and you didn't know any of them personally?

A. Well, I knew that they were taking up claims all right.

Q. Well, who were they?

A. Well, I would have to go around and find their names.

(Testimony of Dan McGilis.)

Q. Well, who were they?

A. Well, I would have to go around and find their names. I can name some of them that said they were taking them up.

Q. How many were there out of the whole number that you spoke of that you can name as having taken up a timber claim at this time?

A. Well, I couldn't name very many right now.

Q. What do you know concerning this hundred people that you spoke of; what do you know concerning their taking up a timber claim?

A. Well; I used to see them going up the river.

Q. Who did you see going up the river?

A. Well, the persons that were taking up claims.

Q. What person did you see going up the river to take up claims?

A. Well, I couldn't tell their names now.

Q. Did you ever know the names of any of them?

A. Oh, yes.

Q. How many there were of them?

A. No, I couldn't say that.

Q. How many did you know?

A. I couldn't answer that either.

Q. Well, there wasn't anyone that you could name, was there?

A. Not that I can remember of; no, sir.

Q. Can you give me the name of one of them?

A. You ask for the name of one of them?

(Testimony of Dan McGilis.)

Q. Yes, sir.

A. Well, I don't know as I could name one or not.

Q. Well, I ask you if you can name one of them?

A. Well, Jimmie Connors was taking up one.

Q. Who else?

A. Well, one name is all that you asked me for.

Q. Well, you can now give me another one.

A. Is that all that you want?

Q. No; I will continue as long as the Examiner permits me to.

A. Well, there was John Gilles.

Q. Well, who else?

A. Well, I cannot think of any more right now.

Q. Then you cannot think of three out of the hundred that you gave?

A. Well, I cannot think of them right now. But if I had to go over the ground I could tell you more about it.

Q. You think, then, by walking over the length and breadth of the Blackfoot River country, you could recall the names of some others? A. Yes; I think so.

Q. Did you see any of these people go up on their claims and look them over?

A. Well, I don't remember anything of it, it wasn't anything of my business.

Q. Now, you never saw any of these people going to the land office and make an entry, or to make a filing?

A. Well, I see people there that was supposed to be taking up land, but I didn't make any inquiry about it.

(Testimony of Dan McGilis.)

Q. You saw them in the land office, did you, yourself?

A. I saw them in the land office. I didn't know what they were doing there.

Q. How often have you been in the land office at Missoula, Mr. McGillis?

A. Three or four times.

Q. And each time you had been in the land office you had seen people in there making filings upon lands?

A. No; not every time.

Q. How many times, did you see people making filings upon lands?

A. Only when I was in there first.

Q. How many of the times that you were in there did you see them making filings?

A. Well, I was in there once myself, and there was other people in there.

Q. How did you happen to be in there?

A. I was in there listening to a trial.

Q. Listening to a land contest? A. Yes, sir.

Q. Were there people making filings there then?

A. No, sir.

Q. What was the occasion of your being in the land office there at either of those times?

A. I was listening at the trial.

Q. Is that the only time, the time that you went to file, and the time that you were listening to this trial?

A. And when I was proving up?

Q. And how many people did you see making entries

(Testimony of Dan McGilis.)

under the Stone and Timber Act besides the times you have mentioned?

A. The only times that I have mentioned myself.

Q. How many people did you see in there at that time?

A. There was a couple in there, I guess.

Q. Is that all of the hundred that you saw going up the river and taking claims that you saw making entries?

A. All I know is that I saw people going up there.

Q. When was this, in what year?

A. Well, that was the year I took up my claim.

Q. What year was that?

A. I have forgotten what year it was.

Q. Was it in the year 1897?

A. Well, I couldn't say. I didn't keep track of it.

Q. Well, do you know whether it was the year 1898?

A. Well, I couldn't say that.

Q. Was it in the year 1899?

A. I couldn't say.

Q. Well, was it in the year 1900?

A. I couldn't say, for I didn't keep any track of it.

Q. Well, was it in the year 1901?

A. I couldn't say.

Q. Well, was it in 1902? A. I don't know.

Q. Well, was it in the year 1903?

A. I don't know. All I can tell you is—I cannot even tell you the day of the year that I filed on.

Q. Then you don't remember the day or the year, or the month when you filed upon this claim?

(Testimony of Dan McGilis.)

A. I could get it for you.

Q. Do you know of any way by which you could ascertain, or is there anything by which you can refresh your recollection?

A. No; I don't know of anything now.

Q. Do you know whether it was in the same year that you filed, that these hundred people filed, or whether it was the same year, or the year subsequent to that?

A. I didn't see these people when they were filing on their claims. I said they were going up there to take up their claims.

Q. Then you don't know if these hundred people filed on claims or not?

A. All I know is what the people said they were doing.

Q. You don't know what year it was done in?

A. No, sir; I do not.

Q. And you have no knowledge as to what they were doing when they were in the land office, these people that you have spoken of? A. I don't know; no, sir.

Q. As a matter of fact, did you ever see anyone go upon a timber and stone claim for the purpose of making an entry of any particular timber and stone claim?

A. I didn't have anything to do with any other people.

Q. I asked you if you ever saw anybody go upon a piece of land for the purpose of entering it under the timber and stone law? A. If I ever saw anybody?

Q. Anybody. A. Only myself.

(Testimony of Dan McGilis.)

Q. And you never saw anybody at all going upon the land for the purpose of making a timber and stone entry?

A. Only what I proved up on myself.

Q. Only what you proved up on yourself?

A. Yes, sir.

Q. Now, you testified, I believe, that you paid $40.00 to your witnesses? A. Yes, sir.

Q. To whom did you pay this money?

A. Mr. Tepper and Charlie Good.

Q. How much did you pay Mr. Tepper?

A. Twenty-five dollars.

Q. How much did you pay Mr. Good?

A. Fifteen dollars.

Q. How did you happen to pay Mr. Tepper more money than you paid Mr. Good?

A. Well, he located me.

Q. And it was because he had located you that you paid him the $25.00? A. Yes, sir.

Q. Were these men acquainted with the land—these witnesses?

A. Well, they had been over it once.

Q. Both of them had been over it once?

A. Both of them, yes, sir.

Q. And you had been on the land with both of them?

A. Yes, sir.

Q. When was this?

A. Well, this was before I made my filing on it, and then a few days before I proved up on it.

(Testimony of Dan McGilis.)

Q. And you went onto the land with both of these men and looked it over, did you? A. Yes, sir.

Q. How long were you on the land?

A. How long was I on it?

Q. Yes, how long were you on it?

A. Oh, I wasn't on it over an hour or two.

Q. Sufficient to go over it and look it all over?

A. Well, as near as we knew how. There was nobody living on it at that time.

Q. And you made a sufficient examination of it to satisfy yourself as to the character of the land?

A. Yes, sir.

Q. And that there was no one living on it?

A. Yes, sir.

Q. And that there was no coal, or any minerals of any character on the claim?

A. Don't know anything about that.

Q. You say you don't know anything about that? Did you find any indications of minerals or anything of that kind? A. No, sir.

Q. You did not? A. No, sir.

By Mr. BICKFORD.—I think we will suspend the cross-examination of this witness, until he can get the papers from the Missoula land office, as well as the remaining witnesses that have been subpoenaed by the Government. They are Mrs. Jennie Mize, Mrs. Daisy Chattin, and Mrs. Martha M. J. Doney. Is that satisfactory?

(Testimony of Dan McGilis.)

By Mr. MAYNARD.—Yes, that is satisfactory to me.

Redirect Examination.

Q. Mr. McGillis, you say that you paid $25.00 to Stephen Tepper? A. Yes, sir.

Q. And $10.00 to Charles Good?

A. Fifteen dollars.

Q. That would be $40.00. $25.00 and $15.00?

A. That is what I paid them.

Q. And that is all the money that you paid out?

A. Yes, sir.

Q. Did you tell Mr. Cobban that you had paid out this money to this man?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, and leading, and it is not proper redirect examination.

Q. What was your answer, Mr. McGillis?

A. What is that you say?

Q. What is your answer? A. No, sir.

Q. Well, who did you tell, if anybody?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, and leading, and it is not proper redirect examination.

A. I didn't tell anybody.

Q. But you say that you got $140.00 from Mr. Cobban?

A. One hundred and forty-five dollars.

Q. Well, what was the $5.00; you have accounted for $40.00. Now, what was the whole $145.00 for?

(Testimony of Dan McGilis.)

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, and leading, and it is not proper redirect examination.

A. Well, that is what I got for my claim, $145.00.

Q. You were credited with the amount that you have paid out, were you not? That is, you were allowed what you had paid out, to Good and Tepper?

By Mr. BICKFORD.—We object to that upon the ground that it is irrelevant and immaterial, and leading, and it is not proper redirect examination.

A. I had to furnish my own witnesses to prove up on the claim.

Q. And pay them also? A. Yes, sir.

Q. Who did you make that arrangement with, that you were to do that?

By Mr. WALSH.—We object to that for the reason, in the first place, that it is leading, and second, it is irrelevant and immaterial, and assumes that some agreement was made with somebody that the witnesses were to testify, when in truth, and in fact, there is nothing in the testimony to warrant such an inference upon the part of counsel.

A. Do I have to answer that question?

By the EXAMINER.—Yes, you can answer after the objection is recorded.

A. It was with Mr. Cobban that I had that with.

Q. Had what?

A. I had to furnish my own witnesses.

(Testimony of Dan McGilis.)

Q. And that agreement you say you made with Mr. Cobban?

By Mr. WALSH.—We object to that for the reason that it is leading, irrelevant and immaterial.

A. I didn't make no agreement with him, but I had to furnish my own witnesses.

Q. Well, if you had to do that, who told you that you had to do it? You say that you had to do it, who told you that you had to do it?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial.

A. No, I had to furnish my own witnesses.

Q. But, who told you, whom did you get that information from; who informed you of that? Did anybody?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial.

A. Well, I had to do that.

Q. Who told you that you had to do that?

A. Well, I had to do that myself. I had to prove up on my own claim.

Q. Well, did anybody tell you you had to do that?

By Mr. WALSH.—We object to that for the reason that it is irrelevant and immaterial.

A. No, there wasn't anybody told me that that I know of.

Q. Now, you say you went to see Mr. Cobban, and

(Testimony of Dan McGilis.)

had these few words with him as you have testified? Now, I want to know if, in view of those facts, you found out that what Tepper had told you was true?

By Mr. BICKFORD.—We object to that because the witness has not said so, and because the question is leading.

A. Yes, sir.

Q. Now, then, what I want to know is, what did Mr. Tepper tell you?

A. Well, he told me that I could take up a claim.

By Mr. BICKFORD.—We object to that for the reason that it is hearsay what Mr. Tepper told him.

A. I told you before, didn't I?

Q. I just want to understand it, Dan, what Tepper told you, just exactly what he told you, without drawing it out?

By Mr. BICKFORD.—We object to the statement of counsel about drawing this thing out on the ground that it is irrelevant and immaterial.

Q. What did he tell you, Mr. McGillis?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial what he did tell him, and because whatever Tepper did tell the witness would be irrelevant and immaterial, and hearsay.

A. He asked me if I wanted to take up a timber claim, and I told him, Yes, I would take up one. I said, "I haven't got any money to take one up with," and he

(Testimony of Dan McGilis.)

says, "I can get you the money to prove up with," so he told me where I could get it.

Q. And who did he say that you could get the money of?

A. Well, he didn't say he could get it from anybody.

Q. Well, who did he say you could get it from?

A. He told me he thought I could get it from Mr. Cobban.

Q. What else did he tell you, if anything?

A. That was all he told me.

Q. That was all?

A. Yes. He located me on a piece of ground.

Q. And then what?

A. Well, he located me, and then I went and filed on it.

Q. Was there anything said by him to you as to what you were to do?

By Mr. BICKFORD.—We object to that for the reason that it is hearsay, and it is irrelevant and immaterial to any of the issues in this case, and it is not proper redirect examination of the witness.

Q. —after you got it located?

A. No, he gave me the figures on the ground after we had looked it over.

Q. Very well; what I wanted to know was when you went to see Mr. Cobban, was that the only thing that you were to ascertain from Mr. Cobban, as to whether Tepper had told you the truth, that you could get the money from him with which to prove up on the land?

(Testimony of Dan McGilis.)

A. He told me—he told me I could, and when I went down to see Mr. Cobban he told me that I could have the money.

Q. What, if anything, was said by Tepper to you, about what you could do after you had proved up?

By Mr. BICKFORD.—We object to that for the reason that it is irrelevant and immaterial, to any of the issues in this case, and it is not proper redirect examination of the witness. The witness has positively stated that Tepper had told him that he could get the money from Mr. Cobban to prove up with, and the witness has already stated what Tepper told him, and when he went to Mr. Cobban to borrow the money, that Mr. Cobban loaned it to him.

A. Yes, that is all the conversation I had with Mr. Tepper.

Q. That was all that was said by Mr. Tepper to you upon that subject?

A. Yes, that was all he said to me.

At this point a recess was taken until two o'clock of the same day.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Tuesday, July 29th, 1902, ten o'clock A. M.

Hearing resumed pursuant to adjournment.

DAN McGILLIS, a witness on behalf of complainant, was recalled for further examination.

(By Mr. MAYNARD.)

Q. Mr. McGillis, there is one question that I failed to ask you. How long have you known Mr. Griswold?

A. Well, I have known him ever since he came into the Blackfoot country; since the first winter he came there.

Q. Where were you living in the spring of 1899?

A. Well, I cannot recollect 1899; I don't know what year that was in.

Q. Well, that would be two years ago?

A. Two years ago?

Q. Well, the spring of 1899?

A. Two years ago, did you say?

Q. Where were you living in the spring of 1899?

A. How long is that ago?

Q. Well, prior to the time of your taking up your claim?

A. How long after the claim was taken up?

Q. Well, I think that would be about a year.

A. A year after, where was I then?

Q. Yes.

A. I was around Clinton, a year after.

Q. Clinton, Montana? A. Yes, sir.

Q. And where you in Missoula quite often during that time? A. Why, yes.

(Testimony of Dan McGilis.)

Q. Do you remember seeing Mr. Griswold there?

A. Why, yes, I used to see him there once in a while. That is, in and out.

Q. Do you remember of his having a suit against Cobban; do you remember of hearing about the suit?

A. All I heard was that there was a suit. Something about timber. That was all.

Q. Well, at that time, and in the city of Missoula, in front of the Higgins Block, did you not have a conversation with him? A. I—

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial, and does not prove, or tend to prove, any of the issues in this case, and further, it is hearsay, and not rebuttal.

A. I saw the man there, yes, sir.

Q. And at that time and place, and in that conversation, did you not tell Mr. Griswold substantially, as follows: That in the rush of the people that were taking up claims—timber claims, you thought that you would join them, and you went and saw Stephen Tepper, who had worked for Mr. Griswold, and asked him if he would get you a claim, and that Tepper said—Tepper said that he could get you a timber claim; and that Tepper told you whom he was working for. And that if he located you, you must agree to at once, after you had got your final proof—made your final proof, and got the receiver's final receipt, that you must convey to Cobban, who would furnish all the money that

(Testimony of Dan McGilis.)

was necessary to pay for the land, over and above the expenses?

By Mr. WALSH.—We object to that because it is leading, in the first place, and next, because it is hearsay.

By Mr. BICKFORD.—And further, because, any declaration made by this witness, now upon the witness-stand would not be binding upon any of the parties to this action, and fourth, it is irrelevant and immaterial, and is a declaration made by a party after having parted with the title, and therefore, it is not competent for him to impeach conveyance after it had been made.

Q. —and that you agreed to that, and that you did carry it out and got a hundred dollars from Mr. Cobban, and your expenses? Didn't you tell Mr. Griswold that in that conversation?

By Mr. BICKFORD.—The objection just made applies to the whole question propounded to the witness.

A. I had no conversation with him about any timber at all that I know of.

Cross-examination.

(By Mr. WALSH.)

Q. Just answer the question, Mr. McGillis, that the gentleman put to you. Did you or did you not have that conversation? A. That what?

Q. That conversation with Mr. Griswold?

A. I had no conversation with him about timber.

(Testimony of Dan McGilis.)

Q. Well, Mr. McGillis, you heard the question that he asked you, didn't you, whether you had such a conversation with Mr. Griswold or not? Did you hear the question he asked you? A. Yes.

Q. Now, tell me whether you did have that conversation, or whether you did not have that conversation? A. With whom?

Q. With Mr. Griswold.

A. I didn't have any talk with Mr. Griswold about timber.

Q. No, he didn't ask you that? He didn't ask you if you had any talk with him, about timber. He asked you if you had a conversation with Mr. Griswold, in which you purported to tell the conversation that you had with Mr. Tepper, with reference to the taking up of this claim and conveying it to Mr. Cobban?

A. No, not that I know of.

Q. Answer the question? Did you have that kind of a talk with Mr. Griswold, or did you not?

A. No, sir.

By Mr. WALSH.—That is all, Mr. McGillis.

By Mr. MAYNARD.—No further examination.

STIPULATION.

It is hereby stipulated and agreed between the parties to the above-entitled cause, and their respective solicitors, that the testimony of the witness, Dan McGillis, may be read over by the Examiner after the same has been transcribed by the stenographer, and

be corrected by him, and when so corrected, may be by the Examiner certified as correct, and when so certified shall have the same force and effect as if the witness had himself read over, corrected, subscribed and sworn to the same.

CERTIFICATE.

I hereby certify that I have carefully read over and corrected the testimony of the witness, Dan McGillis, and that the same has been correctly transcribed.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Monday, July 28th, 1902, 2 P. M.

Hearing resumed pursuant to adjournment.

DAN McGILLIS recalled for further cross-examination.

Mr. BICKFORD.—(Calling Mr. Charles H. Cooper, one of the official stenographers in this hearing.) Mr. Cooper, I wish you would read to Mr. McGillis a portion of his testimony, the portion to which your attention has been called as brought out on the examination in chief. The witness does not always understand so I wish you would read this very plainly.

(Mr. Cooper, reading from his notes:) "Q. And how much money did Mr. Cobban pay to you? A. He paid me $145. Q. $145? A. Yes, sir. Q. Did you know you were to receive this money, Mr. McGillis, this $145? A. Well, there was not anything said about that. Q. What? A. There was not anything said about that.

(Testimony of Dan McGilis.)

Q. There was not anything said about it? A. No, sir. Q. Did you know how much you were to get for your land before you went to prove up? (Objection.) A. Yes, sir. Q. Who told you? A. Mr. Cobban."

Q. Now, right at that point I want you to explain, if you will, Mr. McGillis, what you mean to say when you say you knew how much you were to get for the land before you went to prove up?

A. No, I didn't say that.

Q. You didn't say that?

A. Not that I know of.

By Mr. BICKFORD.—Go on, Mr. Cooper, and read further.

(Mr. Cooper, reading from his notes:) Q. When did he tell you that? A. He never—when I went to see him first. Q. When you went to see him first? A. Yes, sir. Q. And was that before or after you filed? A. That was before I filed. Q. And what did Mr. Cobban then tell you? A. He told me what I have told you. Q. Before you filed he told you that he would give you $100—that is, $100 and expenses—$145, that was it, was it? A. Well, he gave me $145 for my claim after paying for it. Q. What? A. He paid me $145. Q. After you proved up? A. Yes, sir. Q. And did I understand you to say that he told you he would do that before you filed? A Yes, sir."

By Mr. BICKFORD.—Now, I want you to explain about that, Mr. McGillis, and that very last question

(Testimony of Dan McGilis.)

there whether or not you meant to say in your examination in chief that Mr. Cobban told you he would pay you $145 and told you this before you had made your filing?

A. No, I didn't understand that there thing right.

Q. Did he tell you that or didn't he?

A. No, he didn't.

Q. He didn't tell you that?

A. No, he didn't.

Q. How did it happen, Mr. McGillis, that you made that statement this morning in your examination in chief?

A. I don't know how you fellows got it tangled up here.

Q. Do you know how you yourself got it tangled up?

A. No, I don't.

Q. Have you any other explanation to offer than that as to the testimony?

A. Well, all I know is just what I talked to Mr. Cobban—that's all I can tell you.

Q. You have already told us what you talked to Mr. Cobban in your testimony on direct and cross-examination?

A. You haven't got it down there what I talked to him.

Q. We haven't got it down there? A. No.

Q. Well, I asked you concerning that this morning, what your conversation with Mr. Cobban was and you

(Testimony of Dan McGilis.)

related to me what purported to be your conversation with Mr. Cobban; now, if I haven't the conversation that you had with Mr. Cobban can you give it to me now?

A. Yes, I can give it to you in a few minutes.

Q. Well, I wish you would do so.

A. Well, all the agreement I had with Mr. Cobban was that I went and asked him if I could get money to prove up a timber claim, and he said yes, I could get it, and whenever I proved up on the claim he asked me to go over to the justice and sign that deed and he would give me $145.

Q. And this conversation was after the time when you had proved up, was it—after the time when you had been to the land office and made your final proof?

A. Well, that's all the conversation that I had now with him.

Q. At any time?

A. That's all the conversation I had with the man.

Q. When was that conversation, when did you have it? A. What conversation is this?

Q. The one that you have just told us about now?

A. That was the first and the last day.

Q. What took place on the first day and what took place on the last day?

A. Well, I told you what took place on the first day.

Q. Now, tell what took place on the last day.

A. Well, he got the deed to the land and asked me

(Testimony of Dan McGilis.)

to go over to the justice's office and sign it and he gave me $145.

Q. That was the last day? Was that the first time he had ever said anything to you about giving a deed to the land?

A. He didn't say nothing to me about a deed to the land, never.

Q. Didn't he say anything to you about a deed to the land after you had made your final proof?

A. He asked me to sign it.

Q. After you had made your final proof?

A. Yes, sir.

Q. And your talk with him about the deed to the land was after you had made your final proof, as I understand?

A. I don't understand at all.

Q. What was said at the time you first talked with Mr. Cobban—tell us all that was said the first time?

A. I told you twice.

Q. Tell me again, please?

A. The first time I just asked him if I could get money to prove up on the timber claim.

Q. And he said you could? A. Yes, sir.

By Mr. MAYNARD.—Wait a moment. You asked him to give the whole of the conversation that took place at the first talk—was that all the talk that you had with Mr. Cobban the first time you talked with him?

(Testimony of Dan McGilis.)

A. That's all.

Q. Now, the last time you talked with him, and refreshing your memory, and referring to the time that you made your final proof, what was said in that talk with him at that time?

A. I went over after I proved up and told him I would like to get that money to prove up with.

Q. What did he say?

A. He said he would send it over.

Q. Meaning by that that he would send it to the land office?

A. He said he would send it over to the land office.

Q. Then what did you say?

A. I didn't say nothing.

Q. What did he say to you at that time about buying the land from you?

A. He didn't say nothing.

Q. Did he ask you to sign the deed?

A. After I had proved up when the land was paid for he had got the deed and then asked me to go over to the justice's and sign it.

Q. And that was all the talk you had with him at that time?

A. That was all the talk I had with him at that time.

(Testimony of Dan McGilis.)

Redirect Examination.

(By Mr. MAYNARD.)

Q. Now, Mr. McGillis, since we adjourned for dinner, where did you go with these gentlemen that represent the defendant in this case?

A. I went over here and they showed me some papers in there.

Q. They took you to the marshal's office?

A. I don't know.

Q. Took you to some office? A. Yes, sir.

Q. And they showed you some papers?

A. Yes, sir.

Q. And they told you at that time that these papers showed that you had been indicted by the Grand Jury, did they not? A. Yes, sir.

Q. And that you had been charged with having committed perjury in this matter? A. Yes, sir.

Q. And what else did they say?

A. That's all.

Q. And that your perjury, as they claimed by the papers, that they showed you, was in making—

By Mr. WALSH.—We did not claim—he didn't say that we claimed so. You cannot put that question to the witness. I object to counsel asking witness any such question.

Q. The papers, as they claimed, showed that you had committed perjury in your affidavit at the time you made your statement?

(Testimony of Dan McGilis.)

By Mr. BICKFORD.—We object to that for the reason that the papers themselves were shown to the witness and the purport of them explained to the witness, and the papers referred to are among the records of this court.

A. Yes, sir.

Q. And did they tell you that inasmuch as you had been charged with perjury in the making of that affidavit that if you swore differently here you would get yourself into further trouble?

A. No, they didn't say nothing about that.

Q. How long were these lawyers with you representing the defense?

A. When we went out of here?

Q. Yes.

A. We wasn't much over about eight minutes, I should judge.

Q. Didn't they talk to you also about the fact of this deed and about this loan?

A. No, he didn't say nothing that I know of.

Q. What do you say?

A. No, nothing that I know of.

Q. Now, as a matter of fact, Mr. McGillis, you knew when you went down to make your final proof that you were to convey to Mr. Cobban that day—did you not?

A. What convey—I cannot understand them words, they are too big for me.

Q. You knew that you were to sell your land that you made your final proof on that day?

(Testimony of Dan McGilis.)

A. Well, I couldn't say that.

Q. You couldn't say that? A. No.

Q. Why, cannot you say that?

A. Well, I hadn't done it.

Q. You know you hadn't done it?

A. No, sir.

Q. But you expected to do that, didn't you?

By Mr. WALSH.—We object to that as immaterial and irrelevant. As to whether he did or did not expect; the simple question is whether he had agreed to do it.

A. It was for my own benefit.

Q. Certainly, it was for your own benefit, and when you said two or three times that you took this land up for your own benefit just what did you mean by that?

A. Well, I took it up for my own special benefit.

Q. Just what was the special benefit to be?

A. I cannot answer that question.

By Mr. BICKFORD.—We object to that question on the ground that it calls for a conclusion and is not proper redirect examination.

Q. Why cannot you answer it?

A. Well, I don't know how.

Q. Didn't you know what the benefit was to be to you?

A. Well, I cannot answer in no way only that I supposed that I had the right to take up a claim as good as anyone else.

(Testimony of Dan McGilis.)

Q. Yes, certainly, and did you suppose further that you had a right to sell it?

A. Well, I supposed I had a right to sell it after I got a deed to it—that is provided I wanted to.

Q. And didn't you suppose further that you had the right to talk about the matter with Mr. Tepper and that when Mr. Tepper told you that you could at once sell the land to Mr. Cobban and get $100 and your expenses that you had paid that you had a right to do that?

By Mr. WALSH.—We object to the witness answering that question at all and ask the Examiner to admonish counsel that that is not a proper question.

By the EXAMINER.—I wouldn't certify the question up to the Circuit Court as one which in my judgment the witness should be compelled to answer.

Q. You knew from what you talked with Tepper and with others that you could sell that land for $100 that day, did you not?

By Mr. WALSH.—We object to that as immaterial and irrelevant and improper redirect examination.

A. Yes, provided whether I wanted to or not—well, not on that day.

Q. I mean after you had proved up?

A. I could sell it if I wanted to, but I never made no contract to sell it that day beforehand.

Q. What do you mean by a contract?

A. Well, talked about it beforehand.

(Testimony of Dan McGilis.)

Q. You mean you did not enter into a written agreement, do you not?

A. No, sir, I never said nothing about selling it at all till I sold it.

Q. But hadn't you agreed with Mr. Cobban by talking with him without entering into any writing that after you proved up you would sell to him?

By Mr. WALSH.—We object to the question as leading.

A. No, all I told you was that all the talk I had with Mr. Cobban was that I went down there and asked him if he would loan me money to prove up on a timber claim, and he said yes, and then after I had proved up on it why he had got the deed and then he asked me if I would go over to the office and make an affidavit to it, and I told him I would and he gave me $145. That's all the talk I had with the man.

Q. Where did he have the deed?

A. He took it out of his coat pocket.

Q. Where were you when he took it out of his coat pocket? A. I was in the justice's room.

Q. Where had you been just before going to the justice's room? A. I had been over at his office.

Q. Did you go from his office to the justice's room?

A. Yes, sir.

Q. How far was the justice's room from his office?

A. It was only a little ways.

Q. Wasn't it in the same building now?

(Testimony of Dan McGilis.)

A. No.

Q. In another building? A. Yes, sir.

Q. And he went over there with you?

A. Yes, sir.

Q. And you signed the deed? A. Yes, sir.

Q. Did you see the deed drawn up?

A. No, I didn't see it; it was a blank there that I signed, I couldn't tell what was on it.

Q. It was blank where you signed the paper?

A. I signed the paper.

Q. But you didn't see any paper written?

A. I couldn't say nothing about that.

Q. Now, as I understand you, you didn't see Mr. Cobban at any time in your life to do business with him previous to this time, except on the day when you went to see him to ask him if what Tepper had told you was true?

By Mr. WALSH.—We object to that also; the witness has not said at any time that he ever went to Mr. Cobban to ascertain if what Tepper had told him was true.

By Mr. MAYNARD.—The record speaks for itself.

By Mr. WALSH.—The record doesn't speak that way and we object to this question being put to the witness. If the witness didn't say that he went to Mr. Cobban to find out whether what Tepper told him was true he needn't answer the question.

By Mr. MAYNARD.—He did say that.

By Mr. WALSH.—He did not.

(Testimony of Dan McGilis.)

By the EXAMINER.—Read the question.

(Question read.)

A. Why what Tepper told me was true, yes, sir.

Q. What Tepper told you that Cobban would do?

A. Yes, sir.

Q. What was it that Tepper told you?

A. Well, I told you.

Q. Tell me again.

A. He told me that he thought I could get the money from Mr. Cobban to prove up.

Q. And didn't he tell you further how much Mr. Cobban would pay you—

By Mr. WALSH.—We object to that as leading and as having been already answered by the witness.

Q. —after you had proved up?

By Mr. WALSH.—We interpose the same objection.

A. I don't know only what I heard he was giving other people.

Q. Well, what was that?

By Mr. WALSH.—We object to that as immaterial and as hearsay, and we ask the Master to admonish the witness that he need not tell what he heard.

By Mr. MAYNARD.—That is the fact we insist upon, that it was known by these country people that were going up there to take the claims, and it was generally known throughout that country that Mr. Cobban was paying each of these people that located under his direction or those of his agents, $100 and expenses that

(Testimony of Dan McGilis.)

they had paid, and that is what Tepper told him and he went down to see Mr. Cobban and asked him if that was true, and Mr. Cobban told him it was.

By Mr. WALSH.—He has not said anything of that kind at all.

By the EXAMINER.—Without assuming any statements of counsel let him answer the question.

By Mr. BICKFORD.—We want at this time to enter our protest against counsel assuming a condition of affairs to have been testified to which has not been testified to by the witness.

By the EXAMINER.—That I don't pass upon, of course.

By Mr. BICKFORD.—No, sir, but I want it to go in the record that we at this time protest at the unfairness of counsel in assuming a condition of affairs which has not been testified to, and to protest against having entered in the record of these proceedings here the rumors which were current in the neighborhood and asking the witness to verify the rumors which counsel assumes were current in the neighborhood, as not being competent evidence and as being utterly unfair not only to the Court and to the United States Government, but also to the defendant in this case.

A. Well, what he was paying other people was $100; that's all I know about it, and that's only hearsay.

By Mr. WALSH.—We move to strike out the answer

(Testimony of Dan McGilis.)

of the witness because the witness says it was hearsay purely.

By Mr. MAYNARD.—Certainly.

Q. Now, what he was paying other people—state as to whether or not it was not told you by Tepper that you would be paid the same as he was paying other people?

By Mr. WALSH.—We object to that as leading, and as immaterial and irrelevant, and also as hearsay.

A. Now I don't understand.

(Question read.)

A. No, Tepper didn't tell me that—he didn't tell me that.

Q. When did you first find out that you would be paid for the land?

By Mr. WALSH.—We object to that, and we ask the Master to prevent that question also from being asked on the ground that the witness has absolutely testified now that he had no such conversation and did not find out about that matter or any matter touching that matter and there was no talk about it until after he had made his final proof.

By Mr. MAYNARD.—The fact appears of record from this man's testimony that he did receive precisely that amount.

By Mr. WALSH.—Yes, sir, there's no dispute about that; I have not attempted to dispute that. Read the question we are talking about; counsel seems to have

(Testimony of Dan McGilis.)

forgotten what he asked. I submit that this witness ought not to be asked these questions; the questions ought to be asked him so that his answers would be fair; that's what we object to.

By the EXAMINER.—There is an assumption of a fact included in the question.

By Mr. WALSH.—The witness is not a keen, bright man used to the tricks of counsel in this way, and the questions ought to be put to him so that he can understand.

By Mr. MAYNARD.—Here is a man that was supposed to tell the whole truth this morning, and these gentlemen took him away this noon and showed him the indictment and talked to him, and then they have the effrontery to come in here and say that I am trying to mislead my own witness.

By Mr. BICKFORD.—We protest against the assumption of counsel that we had endeavored to mislead the witness or to influence his testimony. We desire to enter a most earnest and persistent protest against the unfairness of counsel representing the Government, because we believe that he is unreasonably and unfairly making a record that is unfair to the court, to the complainant in this case and unfair to the defendant. We enter our protest in the most earnest way against the persistent effort of counsel to mislead his own witness and to cross-examine his own witness and to make a record here which will not fairly present the facts as

(Testimony of Dan McGilis.)

they have been disclosed by the testimony of this witness.

By Mr. WALSH.—We particularly protest against the assumption of counsel that counsel for the defense have been guilty of effrontery, or have tried to influence this witness.

By Mr. MAYNARD.—I want to know how any court —how the Supreme Court of the United States would characterize what these gentlemen did at noon to this witness.

By Mr. WALSH.—If counsel desires to put me on the stand and to put Mr. George Sproule, Clerk of this Court, and Mr. Fred W. Drake, Deputy Clerk of this Court, in whose presence the whole transaction took place we are perfectly willing that he should do so.

(Last question read.)

Q. When did you first find out that you would be paid for the land?

By Mr. WALSH.—To that question we object because it assumes that he found out that he would be paid for the land and at some time prior to the time that it was paid to him.

By Mr. MAYNARD.—Certainly; that's the fact.

By Mr. WALSH.—There is no testimony to that effect, on the contrary the testimony is the other way.

By Mr. MAYNARD.—The absolute fact is that he did and that he did sell for $145, and he accounts for $40

(Testimony of Dan McGilis.)

that he paid his two witnesses and he gave the exact amount that he got.

By Mr. WALSH.—There is no dispute about that. You asked him when he first learned what they would give for the land. That assumes that he learned about it at some time prior to the time that he says he did.

By Mr. MAYNARD.—Certainly, that's what I asked him—that very question.

By Mr. WALSH.—We object to his answering that question.

A. That $145?

Q. Yes. A. That was after I proved up.

Q. But had there nothing been said to you before that time?

A. That was all the conversation there, I told you before that whenever I proved up and Mr. Cobban got the deed—I supposed it was a deed—he asked me if I wouldn't go over to the justice's office and make an affidavit and he said: "I'll give you $145."

Q. That was the only time you ever had any conversation with him?

A. That's all the talk and I told you two or three times.

Q. You never before that time had given any note of any kind? A. No, I didn't give no note.

Q. Nor any mortgage? A. No.

Q. Nor nothing except that deed?

A. I didn't give no mortgage—a mortgage on what?

(Testimony of Dan McGilis.)

Q. On this land?

A. I didn't have the land till then.

Q. I mean there had been no talk about it?

A. No, not with me that I know of.

Q. Not that you know of? A. No.

_____.

Subscribed and sworn to before me this ____ day of _____, A. D. 1902.

_____,

Standing Master in Chancery and Examiner.

Under the stipulation of the parties I do hereby certify that I have read and carefully corrected the testimony of the above-named witness, Dan McGillis, and that the same has been correctly transcribed.

HENRY N. BLAKE,

Examiner.

Mrs. JENNIE MISE, after being duly sworn as a witness on behalf of complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. How old are you, Mrs. Mise?

A. Fifty-two years old.

Q. Are you the wife of James Mise?

A. Yes, sir.

Q. Do you remember making an entry under the Stone and Timber Act?

(Testimony of Mrs. Jennie Mise.)

A. Yes, sir, I made an entry.

Q. And afterwards making your final proofs?

A. Yes, sir, I made final proofs afterwards.

Q. And on the same day conveying to Mr. Cobban?

A. I don't think I did.

Q. I call your attention to page 338 of the record, please read with me: "On August 23, 1899, Jennie Mise made timber and stone sworn statement No. 305 for the east half of the northeast quarter and the east half of the southeast quarter of section 24, township 15 north, range 16 west. Notice was published in the "Missoulian," and Herbert Eddy, Calvin Yarger, Abraham J. Jemison and Ernest Kilbourn were named as the witnesses. On November 6, 1899, final proof was take before me and Ernest Kilbourn and Abraham J. Jemison appeared as witnesses, and upon the same day final receipt and certificate were issued." Now, Mrs. Mise, I show you a certified copy of a deed that you gave to Mr. Cobban being Complainant's Exhibit No. 46, and it says, you will notice, on November 6, 1899, final proof was taken and final receipt and certificate were issued. I ask you to look at that certified copy of this deed, being exhibit No. 46, and ask you what deed that is?

By Mr. WALSH.—That is not a proper question to ask this witness; the instrument speaks for itself. Never mind answering, Mrs. Mise.

Q. I ask you if this doesn't read: "This indenture

(Testimony of Mrs. Jennie Mise.)

made the 6th day of November, 1899" and also the acknowledgment on the 6th day of November, 1899?

By Mr. WALSH.—Don't answer that question.

Q. You say, do you not, Mrs. Mise—

By the EXAMINER.—What is the question?

By Mr. WALSH.—There is no question. He is asking whether the deed doesn't read so and so. The deed is the best evidence, and he is simply encumbering the record by reading into it things that have no relevancy which are already in the record. We protest at this time against this style of examination, it being something that would be beyond the knowledge of the witness and the record itself being the best evidence of the fact which is sought to be shown by the testimony of the witness.

By Mr. MAYNARD.—The witness has sworn that she did not think that she conveyed to Mr. Cobban on the same day that she made her final proofs; now, then, for the purpose of refreshing her recollection I show the record in this case to the witness and show the day of final proof and the day of her deed for the purpose of asking her as to whether or not she is or is not mistaken.

By the EXAMINER.—What is the question?

By Mr. WALSH.—We cannot tell anything about your purpose; we object to this question.

By Mr. MAYNARD.—I am showing the witness a

(Testimony of Mrs. Jennie Mise.)

portion of the official record to lay the foundation for a question that I propose to propound to her.

By Mr. WALSH.—We will reach that pretty soon.

Q. Now, I ask you having examined this record and this exhibit as to whether or not you think that you were mistaken when you said—

A. Yes, I was mistaken, though I didn't think that I sold the place on the same day that I proved up.

Q. Now, will you please tell me, Mrs. Mise, how it came that you conveyed your land on the same day that you made final proof to Mr. Cobban?

A. Well, I don't know how it came; it seems it was done.

Q. Do you mean in explanation of that answer that you had nothing to do with the business yourself?

By Mr. WALSH.—We object to that as leading.

A. Well, I don't mean that I didn't have anything to do with the business myself.

Q. As a matter of fact, did you have anything—any individual business with Mr. Cobban?

By Mr. WALSH.—We object to that as leading.

A. No, sir, I did not.

Q. Who did the business for you?

A. My husband.

Q. Did you ever have any talk with Mr. Cobban relative to buying your land?

By Mr. WALSH.—We object to that as leading.

A. I don't know whether I did or not. I sold the

(Testimony of Mrs. Jennie Mise.)

land to a man, but I don't know who I sold it to. He was a stranger to me, and I never saw him before or since.

Q. Never saw him before or since that day—do you mean the day that you sold?

A. Yes, sir; to the best of my knowledge I never saw him before nor since.

Q. Do you know who that man was?

A. No, sir, I don't know.

Q. Did you know his name?

A. I suppose that I heard his name at the time that I sold the land, but I did not remember it.

Q. Can you tell me how you came to sell the land?

A. I don't remember how I came to.

Q. Did you receive any money yourself for the land that you took up?

By Mr. WALSH.—We object to that as leading.

A. I didn't receive any money myself.

Q. Did you know of anyone receiving any money for you?

By Mr. WALSH.—We object to that as leading.

A. I think that I received a check.

Q. Well, Mrs. Mize, will you please tell me what your recollection is on that subject?

A. I don't remember very much about it; I had a very hard headache that day and I don't remember really what transpired that day at all.

Q. What did you do with the check?

A. My husband got it cashed for me.

(Testimony of Mrs. Jennie Mise.)

Q. Did you see the check?

By Mr. WALSH.—We object on the ground that the question is leading.

A. I believe I had the check in my hand.

Q. Do you know who you received it from?

By Mr. WALSH.—Same objection; that it is leading.

A. I don't know who I received it from.

Q. How much was it for?

By Mr. WALSH.—We object for the reason that the check is the best evidence.

A. I don't remember that either.

Q. Don't remember anything about how much the check called for? A. No, sir.

Q. Are you able to state that it was more or less than $200?

By Mr. WALSH.—We object to that question as leading, and for the further reason that the check is the best evidence.

A. I couldn't positively; I don't think I could positively state how much it was for.

Q. Mrs. Mize, you know it was more than a certain sum, do you not, and not less than a certain sum?

By Mr. WALSH.—We object to that as leading.

A. Well, I don't know that I do know anything about it. I wouldn't be positive.

Q. Don't you know that the sum was less than $200?

By Mr. WALSH.—We object to that as leading.

(Testimony of Mrs. Jennie Mise.)

By Mr. BICKFORD.—We object further on the ground that the witness has already answered the question by saying that she doesn't know the amount of the check, and further that it is an effort on the part of counsel to cross-examine his own witness.

By the EXAMINER.—Let her answer.

A. I think I answered that question if I am not mistaken.

By the EXAMINER.—Just answer it again, please.

A. I am not positive how much it was for.

Q. Well, that doesn't answer my question, Mrs. Mize. Aren't you positive while you may not know the exact amount that it was less than $200?

By Mr. WALSH.—We object to that question as leading.

A. It might have been.

Q. Do you know that it was?

A. I told you a time or two that I do not know.

Q. You have told me a time or two that you did not know the exact amount?

A. If I knew the exact amount I would be pretty apt to know whether it was more or less than $200 or $300.

Q. What is your best recollection on the subject—was it more or less than $150?

A. I cannot tell you.

Q. Can you assign any reason why, in a matter of that kind, you have no recollection on the subject?

(Testimony of Mrs. Jennie Mise.)

A. My husband done the business and his business and mine generally goes together, and I don't know just how it was.

Q. But you say that the check was handed to you, and you handed it over to your husband?

A. I didn't say it was handed to me, I said I might have had the check in my hand.

Q. If you might have had the check in your hand, then you saw it, did you not?

A. I saw it, but I didn't look to see the amount of it.

Q. Are you able to state the reason why you did not look to see the amount of the check that was given you in payment for your land?

A. I didn't know as it was necessary.

Q. You say that you turned the check over to your husband; did you say that?

A. I don't know that I did.

Q. Well, did you?

A. If I had the check at all I suppose I gave it to my husband.

Q. Do you recollect receiving any money from your husband as the proceeds of the check, or from anybody else?

A. I don't remember whether he gave me the money or if he kept it himself.

Q. You have no recollection on that subject?

A. No, sir.

Q. Have you any recollection as to whether or not he told you as to whether he got the money on the check?

(Testimony of Mrs. Jennie Mise.)

By Mr. BICKFORD.—We object to this for the reason that that would be hearsay.

A. Yes, he told me he got the money.

Q. How much did he tell you he got?

By Mr. BICKFORD.—We object to that as hearsay.

A. I don't know that he told me.

Q. So you don't know how much money he got?

A. No, sir.

Q. And have no knowledge as to the amount he got for his entry? A. No, sir.

Q. Did you never talk the matter over with him?

A. I don't recollect that I did.

Q. When you made this entry, Mrs. Mize, for the purchase of this 160 acres of Government land, what money did you have at the time to pay for it?

A. I hadn't any, myself.

Q. Did you know where you were going to get the money?

A. My husband said he'd see about getting the money.

Q. Did he tell you any person from whom he was to get it? A. No, sir.

Q. Are you any relative of any of the Jemisons?

A. By marriage I am.

Q. What marriage relationship is there?

By Mr. BICKFORD.—We object to that as immaterial and irrelevant.

A. One of my sisters married a Jemison and a stepdaughter of mine married a Jemison.

(Testimony of Mrs. Jennie Mise.)

Q. Can you give their names?

A. Abraham Jemison is my brother in law, and Philip Jemison is my stepdaughter's husband.

Q. And there were quite a party of you that went up to look over the land, were there not?

By Mr. BICKFORD.—That is objected to as immaterial, irrelevant and also as leading.

A. There were two or three parties besides myself.

Q. And just where was your home at that time?

A. At Rosemont.

Q. Where is that?

By Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. He wouldn't know after I tol[illegible]im; it was on the foothills south of Burnt Fork creek.

Q. And how far is it from Clearwater?

A. I don't know anything about Clearwater.

Q. Do you live in the Bitterroot country?

A. Yes, sir.

Q. How far from Missoula?

By Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. I don't know how far it is; I'm not living now where I did then; Rosemont is twelve or fifteen miles from Stevensville.

Q. Had you ever been on this particular location before you went up there?

(Testimony of Mrs. Jennie Mise.)

By Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. No, sir, I never was there before.

Q. Nor since?

By Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. No, sir.

Q. And you were located by your relative, Albert Jemison, were you not?

By Mr. BICKFORD.—That is objected to as immaterial and irrelevant and also leading.

A. Albert Jemison is no relative of mine.

Q. Mrs. Mize, what were you going to do with this land that you were to take up?

By Mr. BICKFORD.—Objected to as immaterial.

Q. What did you have in mind?

By Mr. WALSH.—The same objection.

A. I don't know as I had anything in mind any more than anyone else that takes up land.

Q. Do I understand by that that you did not know what you were going to do with the land?

A. No, sir, I didn't know what I would do.

Q. You expected to sell it as soon as possible after you obtained title to it, did you not?

By Mr. BICKFORD.—Objected to as leading.

A. I had no such thoughts, no sir.

Q. Why was that—was that because you left the whole matter to your husband?

(Testimony of Mrs. Jennie Mise.)

By Mr. BICKFORD.—Objected to as leading.

A. I didn't know at the time when I took it up but what I would keep it.

Q. There was nothing said at any time from the time that you first thought about taking up this land and while you were living at Rosemont and making your pilgrimage up into the mountains about Mr. Cobban?

A. No, sir.

Q. You had never heard his name mentioned?

A. No, sir.

Q. And I suppose nothing was said in your presence by anyone that there would be an opportunity given to sell the land after final proof had been made?

A. No, sir.

Q. And you received $100?

By Mr. BICKFORD.—Objected to as leading, and also as hearsay.

A. No, sir.

Q. You never heard that? A. No, sir.

Q. It was not talked over there while you were up in the mountains by anybody?

By Mr. WALSH.—We object to that as leading and also hearsay.

A. No, sir.

Q. You never did hear it talked over?

By Mr. WALSH.—The same objection, it is leading and also hearsay.

A. No, sir.

(Testimony of Mrs. Jennie Mise.)

Q. And just how it came to be sold on the day that you made your final proofs you do not know?

A. No, sir.

Q. And you don't know how much you got?

By Mr. WALSH.—Objected to as leading.

A. No, sir, I am not positive how much I got.

———.

Subscribed and sworn to before me this ——— day of ———, A. D. 1902.

———,

Standing Master in Chancery and Examiner.

Under the stipulation of the parties, I hereby do certify that I have read and carefully corrected the testimony of the above-named witness, Mrs. Jennie Mise, and the same has been correctly transcribed.

HENRY N. BLAKE,

Examiner.

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA,
Complainant.

vs.

WILLIAM A. CLARK,
Defendant.

Certificate of Master in Chancery.

To the Judges of the Above-Entitled Court:

I do hereby certify that under the order of said Court, made and entered in said cause, upon the first day of October, 1901, and in pursuance of the stipulations and agreements of the above-named parties, I continued to take the testimony therein, at my office, in the city of Helena in said District; that Charles H. Cooper, and George H. Macdougall, heretofore appointed stenographers, took the testimony of the witnesses in shorthand, and transcribed the same; that the following-named witnesses personally appeared before me, and were duly sworn to testify to the truth, the whole truth, and nothing but the truth, to wit: Daisy L. Chattin, R. M. Cobban, Martha M. J. Doney, C. L. Griswold, May Hawthorne, L. W. Heath, Robert W. Kemp, Mrs. Elizabeth A. Muchmore, Frank L. Reece, Joseph P. Woolman and Lincoln Working.

That the said witnesses were examined by the counsel for the respective parties, and their testimony is contained in this volume numbered eleven, on pages 5909 to 6297, inclusive; that said witnesses, Lincoln Working, Frank L. Reece, R. M. Cobban, L. W. Heath and Joseph P. Woolman, carefully read, corrected, subscribed and verified their testimony before me at the times hereinafter mentioned; and that under the stipulations of the parties, I read and certified that the testimony of said witnesses, Daisy L. Chattin, Martha M. J. Doney, May Hawthorne, Elizabeth A. Muehmore, and Robert W. Kemp had been correctly transcribed.

Defendant's Exhibits numbered 316 to 343 inclusive, and 348, and Complainant's Exhibits 344, 345, 346, and 347, described in the index hereto, I herewith file.

And I do further certify that the following described papers, were produced at the hearing before me by the witness, R. M. Cobban, in obedience to a subpoena duces tecum, to wit: the original contract of R. M. Cobban, and C. L. Griswold, the duplicate contract of R. M. Cobban and C. L. Griswold, the statement of account of C. L. Griswold with R. M. Cobban, by R. M. Cobban; the the deed of Allen Dodd to R. M. Cobban; the deed of Doc. E. Watson and wife to R. M. Cobban, the two deeds of Marion B. Watson and wife to R. M. Cobban, the deed of Edward Dodd and wife to R. M. Cobban; that the same were delivered to the solicitors for defendant by said R. M. Cobban, and then delivered by said solicitors to me as said Examiner, upon the condition that the solicitors for the complainant should not have the priv-

(Testimony of Daisy L. Chattin.)

ilege of using the same for the purpose of examining witnesses thereon; that said Court, upon the 21st day of August, 1902, overruled the petition of the complainant, respecting the production of said papers, as evidence at this hearing, and I have placed the same in the custody of the clerk of said court.

I do further respectfully report that upon the 22d day of August, 1902, said hearing of said cause, before me as said Examiner, was adjourned without day, and that all the evidence taken before me, has been filed with the clerk of said court.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Dated this 25th day of August, 1902.

DAISY L. CHATTIN, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Where do you live, Mrs. Chattin?

A. I live up the Rattlesnake from Missoula.

Q. About how old are you?

A. I am thirty-one.

Q. You are the wife of John W. Chattin?

A. Yes, sir.

Q. How long have you lived at Rattlesnake?

A. Six or seven years.

Q. What was your maiden name?

A. Daisy Suttlemeyer.

(Testimony of Daisy L. Chattin.)

Q. Where did you live before you were married?

A. Salem, Oregon.

Q. You made an entry under the Stone and Timber Act, did you not? A. Yes, sir.

Q. For the purpose of refreshing your memory in regard to the matter, Mrs. Chattin, I ask you to read with me a portion of the record, found on page 902. "Daisy L. Chattin, on August 9th, 1899, made timber and stone sworn statement No. 288, for the southeast quarter of section ten, township fifteen north, range fifteen west. Notice was published in the 'Missoulian,' and Charles C. Snyder, J. L. Deering, John Saleen and Stephen Tepper were named as witnesses. On October 20th, 1899, final proof was taken before William Q. Ranft, receiver, and John Saleen and Charles C. Snyder were witnesses, and on the same day receipt and certificate were issued. Patent was transmitted to our office August 7th, 1900." It appears that on October 20th, 1899, final proof was taken in the case?

A. Yes, sir.

Q. Now, I show you Complainant's Exhibit No. 3, which you will see is a deed from John W. Chattin and yourself to Mr. Cobban? A. Yes.

Q. Will you be kind enough, Mrs. Chattin, to tell me how it happened that you conveyed this land that you entered to Mr. Cobban on the same day that you made your final proofs?

A. Well, I didn't do that on the same day.

(Testimony of Daisy L. Chattin.)

Q. Well, all that I know about it is that the record says that you did?

Mr. BICKFORD.—Another case in which the record is mistaken, Mrs. Chattin.

A. Well, I will tell you how that was. Mr. Chattin transacted all the business for me, and all I know about this affair is that I took up this timber claim and deeded it to Mr. Cobban, and that is all I had to do with it. I don't remember just when it was that I signed the deed, but it was two or three days—I know I went home first and came back again and deeded this land to Mr. Cobban.

Q. How far was your home from Missoula?

A. Well, it is a mile and a half.

Q. Well, it would be easy for you to go a mile and a half and back again on the same day, would it not?

A. Well, I didn't do that.

Q. Did your husband, John W. Chattin, make an entry, too?

A. Yes, sir; not at the same time I did, though.

Q. He didn't make an entry until long after, did he?

A. I think it was before; I don't remember.

Q. Why did it happen that you did not make entries at the same time?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. I am sure I don't know anything about that.

(Testimony of Daisy L. Chattin.)

Q. Do you remember who you went up into the mountains with?

A. Yes, sir; Charlie Snyder and Lou Deering.

Q. That is John L. Deering, is it not?

A. It may be.

Q. You went up with them? A. Yes, sir.

Q. And Mr. Cobban went with you, did he not?

A. Oh, no, sir, I didn't say that; it was Stephen Tepper.

Q. Where did you meet Mr. Tepper?

A. At Clearwater. He located my timber claim.

Q. And as I understand it, you and Deering and Snyder went up into the mountains. Did anybody else go with you? A. No, sir.

Q. How did you go? A. In a conveyance.

Q. Were there just three in the party?

A. Well, there was a girl along; I don't know who she was.

Q. You don't know her? A. No, sir.

Q. Did she make an entry, too? A. No, sir.

Q. What talk had you had, and with whom, that led you to go up there at that time?

A. With Mr. Chattin, my husband.

Q. It was the talk that you had with your husband?

A. Yes, sir.

Q. What was that?

Mr. WALSH.—We object to that on the ground that it is hearsay and immaterial and irrelevant, and also

(Testimony of Daisy L. Chattin.)

because it asks for a communication between husband and wife, and the witness is not called upon to tell about it. I will say to you, Mrs. Chattin, that you are not called upon to answer anything that counsel asks you concerning any talk that you and your husband had together.

The WITNESS.—I understand.

Q. Do you decline to answer for that reason?

Mr. WALSH.—Don't answer that question at all.

Q. You decline to answer what your husband said because it is a communication between you and your husband?

Mr. WALSH.—You may do just as you like. If you want to tell it you can, but you don't have to.

A. Well, I don't want to.

Q. You don't want to tell? A. No.

Q. Well, for what reason did you go up there to take up this claim, Mrs. Chattin?

Mr. BICKFORD.—Objected to because the question answers itself.

A. I went because Mr. Chattin said I could go.

Q. Your husband? A. Yes, sir.

Q. Had you seen Mr. Cobban at this time?

A. No, sir, I didn't see Mr. Cobban.

Q. When did you see him?

A. I didn't see him at all; he was away.

Q. Did you talk with any one at all about selling your land?

(Testimony of Daisy L. Chattin.)

A. Mr. Chattin said I could sell it if I wanted to, and if I didn't, I could keep it.

Q. Did you talk with any one about it?

A. No, sir, only Mr. Chattin.

Q. I mean besides Mr. Chattin? A. No, sir.

Q. Well, without having had any talk, how did you come to sell the land?

A. Mr. Chattin said I could sell it if I wanted to.

Q. But you sold it to Mr. Cobban? Did you sell it to him without having any talk with him?

A. Yes, sir. Mr. Chattin did all the business; I had nothing to do with it and I know nothing about it.

Q. Don't know anything about it?

A. No, sir. All I know is what I told you I knew.

Q. You had no talk with Mr. Cobban at all?

A. I did not see Mr. Cobban, for he was not at home.

Q. Did you see anybody representing him?

A. No, sir.

Q. Do you know Major Catlin by sight?

A. Yes, sir.

Q. And Mr. Pound by sight? A. Yes, sir.

Q. I ask you, having called your attention to those men, whether you saw either of them at the time?

A. Mr. Chattin did. Mr. Pound was doing Mr. Cobban's business, and Mr. Chattin seen Mr. Pound, but I never.

Q. Were you present at the time?

A. No, sir.